PREME COURT

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 188

ROBERT BALDWIN,

Appellant,

vs.

NEW YORK,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANT

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Opinion Below

The majority and dissenting opinions of the New York Court of Appeals are reported at 24 N. Y. 2d 207, 247 N. E. 2d 260 and appear in the printed appendix at pages 25-48. No other opinions have been rendered.[1]

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[1] Lower court opinions were written, however, in the companion case to appellant's before the New York Court of Appeals. *Matter of Hogan* v. *Rosenberg*, 24 N.Y. 2d 207, 247 N.E. 2d 260 (1969) [App. 25-48], appeal docketed, *sub nom.*, *Puryear* v. *Hogan*, No. 2199, Misc. October Term, 1968. In that case, Judge Rosenberg

Jurisdiction

The judgment of the New York Court of Appeals was entered March 6, 1969 (App. 23).[2] Notice of appeal was filed in the Criminal Court of the City of New York, County of New York, the court possessed of the record, on April 4, 1969. The appeal was docketed on April 8, 1969, and probable jurisdiction was noted by the Court on June 2, 1969. The jurisdiction of the Court is invoked pursuant to Title 28 of the United States Code, Section 1257 (2).

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of the New York City Criminal Court ruled that *Duncan* v. *Louisiana*, 391 U.S. 145 (1968) mandated a jury trial for a misdemeanor punishable by a year's imprisonment, and granted the defendants' pretrial motion for one. *People* v. *Bowdoin*, 57 Misc. 2d 536, 293 N.Y.S. 2d 748 (Crim. Ct., N.Y. Co. 1968). Seeking prohibition, the People commenced an Article 78 proceeding in Supreme Court, New York County. Denying relief, that court per Justice Streit held that a jury trial was required because one of the defendants was also punishable upon conviction as a Young Adult which would subject him to imprisonment for up to four years (N.Y. PENAL LAW, § 75.00), but he disagreed with Judge Rosenberg's holding that a jury trial was required for a misdemeanor punishable by up to one year's imprisonment. *Matter of Hogan* v. *Rosenberg*, 58 Misc. 2d 585, 296 N.Y.S. 2d 584 (Sup. Ct., N.Y. Co. 1968). A majority of the Court of Appeals agreed that a jury trial was not required for crimes punishable by one year's imprisonment but that a sentence in excess of one year rendered a crime "serious" under *Duncan*. Rather than grant a jury trial for a misdemeanor in such a case, the court ruled that the New York City Criminal Court was without jurisdiction to impose such a sentence (App. 36).

[2] "App." references are to the separate appendix filed pursuant to Rule 36. The appendices to this brief will be cited as "Appendix A," etc.

The Constitutional and Statutory Provisions Involved

United States Constitution, Amendment VI

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United States Constitution, Amendment XIV, Section 1

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New York State Constitution, Article I, Section 2

"The right to trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever."

New York Constitution, Article VI, Section 18

"Trial by jury is guaranteed as provided in article one of this constitution. The legislature may provide that in any court of original jurisdiction a jury shall be composed of six or of twelve persons and may authorize any court which shall have jurisdiction over crimes and other violations of law, other than crimes prosecuted by indictment, to try such matters without a jury, provided, however, that crimes prosecuted by indictment shall be tried by a jury composed of twelve persons, unless a jury trial has been waived as provided in section two of article one of this constitution."

New York City Criminal Court Act, Section 40

"All trials in the court shall be without a jury. All trials in the court shall be held before a single judge; provided however, that where the defendant has been

charged with a misdemeanor * * * [he] shall be advised that he has a right to a trial in a part of the court held by a panel of three of the judges thereof * * *."

New York Penal Law, Section 70.15. Sentences of imprisonment for misdemeanors and violation.

"1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year."

New York Penal Law, Section 165.25. Jostling

"A person is guilty of jostling when, in a public place, he intentionally and unnecessarily:

1. Places his hand in the proximity of a person's pocket or handbag; or

2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

Jostling is a class A misdemeanor.

Questions Presented

1. Whether Section 40 of the New York City Criminal Court Act violates the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment by prohibiting jury trials for misdemeanors punishable by sentences of one year's imprisonment.

2. Whether Section 40 of the New York City Criminal Court Act violates the Equal Protection Clause of the Fourteenth Amendment by denying defendants charged with misdemeanors in New York City the jury trial which is granted to defendants charged with the same crimes in all other parts of the State.

Statement of the Facts of the Case

On August 11, 1968, appellant, Robert Baldwin, was arraigned in the Criminal Court of the City of New York, New York County, upon a complaint charging him with the crime of "jostling", a class A misdemeanor under New York law punishable by up to one year's imprisonment. N. Y. PENAL LAW §§165.25, 70.15 (App. 1).

The arresting officer's complaint alleged that appellant, acting in concert with one Arthur Bethea, did jostle an unknown female at the Port Authority Bus Terminal on August 10, 1968. Specifically, the complaint alleged that Bethea "did crowd said female and attempted to shield actions of defendant Robert Baldwin who did place his hand in the proximity of unknown female's purse" (App. 1, 2). The court fixed bail at $1000.00 and adjourned the case to August 26, 1968 (App. 4).

On August 26, 1968, prior to trial, appellant's counsel made a motion for a jury trial, which the court denied (App. 7).

At trial, the arresting officer testified that, from the balcony area of the mezzanine in the Port Authority Bus Terminal, he had observed appellant and Bethea descend an escalator stairway, and saw Bethea place himself along-

side an unidentified female while appellant placed himself behind the woman. As they proceeded down the stairway, Bethea turned slightly to the left, and appellant stuck his hand into the woman's purse and removed an unknown sum of money in a loose package (App. 8, 9). After refreshing his recollection from his notes, the officer testified that appellant had only a ten dollar bill in his possession when arrested (App. 10). Finding the officer "a very forthright and credible witness", the trial judge found appellant and Bethea guilty as charged (App. 16). On September 3, 1968, the court sentenced appellant to one year's imprisonment in the New York City Penitentiary at Rikers Island (App. 21).

On January 10, 1969, the Appellate Term of the Supreme Court of the State of New York, First Judicial Department, affirmed appellant's conviction without opinion (App. 22), and on March 6, 1969, the New York Court of Appeals affirmed the judgment of the Appellate Term by a 5 to 2 vote (App. 25-48). The majority rejected appellant's Sixth Amendment and due process contentions on the grounds that *Duncan* v. *Louisiana*, 391 U. S. 145 (1968) did not require a jury trial where punishment for a crime did not exceed one year, and that using the law of the locality as a gauge of its social and ethical judgments, the historical distinction between felonies and misdemeanors drawn by the New York Legislature and the New York courts meant that the People of the State of New York had determined that a misdemeanor, although punishable by as much as one year's imprisonment, was not a serious offense for jury trial purposes (App. 27). The majority's rejection of appellant's equal protection claim was based on this Court's decisions in *Salsburg* v. *Maryland*, 346

U. S. 545 (1954) and *Missouri* v. *Lewis*, 101 U. S. 22 (1879), and the belief that the heavy caseload existing in the criminal courts of New York City had created extraordinary and unique circumstances which furnished a reasonable basis for distinguishing between New York City and all other counties in the State with respect to the right to a jury trial (App. 32, 33).

Judge Burke, joined by Judge Keating in dissent, was of the opinion that class A misdemeanors punishable by up to one year's imprisonment were "serious" crimes within the meaning of that term as used in *Duncan;* that the majority had erred in referring only to the existing and past laws in New York rather than in the nation; and that even applying the restricted criteria of New York practice, a class A misdemeanor was "serious" because the Legislature had provided for a jury trial upon such a charge in every other county of the State. On the equal protection issue, the dissent expressed the view that the holding in *Salsburg* v. *Maryland,* had been undermined by subsequent decisions of the Court[3] and that the State of New York, having made jury trials generally available for misdemeanors cannot, consistent with the Equal Protection Clause, withhold one solely because the crimes was prosecuted in New York City (App. 36-42, 45-48).

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[3] *Duncan* v. *Louisiana*, 391 U.S. 145 (1968); *Baxstrom* v. *Herold*, 383 U.S. 107 (1966); *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Baker* v. *Carr*, 369 U.S. 186 (1962); *Griffin* v. *Illinois*, 351 U.S. 12 (1956).

Summary of Argument

In *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), this Court held that a State must grant the right to trial by jury to a person charged with a serious crime. As Louisiana was the only State in the country that did not afford a jury trial for a crime punishable by two years' imprisonment, that denial was held to violate the Sixth Amendment. Section 40 of the New York City Criminal Court Act suffers from the same constitutional infirmity because it leaves New York City as the only jurisdiction in the United States in which a person is denied a jury trial for a crime punishable by one year's imprisonment. Because this practice is unique, reference to laws and practices throughout the nation, as required by *Duncan*, renders such a crime serious under the Sixth Amendment.

The court below erred in confining its analysis to consideration of New York's historical experience of denying common law juries for crimes that were not classified as felonies. The right to jury trial was much more restricted in colonial New York than in the other colonies, and New York's practice was as unrepresentative then as it is today. Its historical rationale is particularly inapposite today, because it reflected a colonial aristocracy's lack of concern for the procedural rights of the lower economic and social classes. The felony-misdemeanor distinction which it spawned has been rejected by this Court as a proper method for determining the seriousness of a crime. Moreover, those crimes now punishable by a year's imprisonment, such as jostling, are unlike, and far more serious than those offenses which were regarded as petty by the framers of the Constitution. The historically petty

offenses more closely resemble the crimes now punishable by less than six months' imprisonment under New York law. A variety of statutes attaching collateral consequences to conviction of any misdemeanor, including jostling, is further evidence of their seriousness, and the availability of jury trials for such crimes everywhere in the State except New York City shows that the People of the State do regard such crimes as serious.

Administrative burdens are not a valid consideration in defining vital constitutional rights. Moreover, there is no evidence that requiring jury trials would hamper New York City's criminal court system. In fact, present conditions in the City's criminal courts, typified by hasty trial procedures and low standards of judicial conduct, experienced mainly by the minority residents of the city's ghettos, emphasize an overriding necessity for providing the right to trial by a jury representative of a cross-section of the community.

By denying jury trials in New York City when they are afforded in every other county of the State, the statute violates the Equal Protection Clause of the Fourteenth Amendment. Previous decisions of this Court, erroneously relied on by the court below, do not permit indiscriminate territorial differentiation. Where rights of fundamental importance are concerned, more recent decisions of the Court require that the State show an overriding and compelling interest in their restriction. The right to trial by jury, provided by a State for part of its citizenry, may not be denied to others solely because of the situs of prosecution. Because jury trials in New York City will not unduly burden the city's court system, there is no rational basis

and clearly no compelling interest of a dimension justifying such discrimination against persons prosecuted in New York City.

ARGUMENT

I.

Section 40 of the New York City Criminal Court Act Violates the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment by Prohibiting Jury Trials for Crimes Punishable by One Year's Imprisonment.

A. Under the Criteria of Duncan v. Louisiana, 391 U. S. 145 (1968), a Crime Punishable by a Year's Imprisonment Is a Serious Crime Requiring a Jury Trial.

In *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), the Court observed that in only three jurisdictions—Louisiana, New Jersey and New York City—were persons denied a jury trial though charged with misdemeanors punishable by imprisonment for up to a year.[4] At present, this practice exists only in the five counties that comprise New York City.[5] In New York's remaining fifty-seven counties, a jury trial is provided for persons charged with any mis-

[4] 391 U.S. at 161, N. 33. An up-to-date survey of each State's provisions for jury trials is set forth in Appendix A.

[5] Louisiana, which at the time of *Duncan* denied jury trials for 41 various misdemeanors punishable by more than six months' imprisonment, has since lowered the maximum sentence for 19 of those crimes to six months and has provided for trial by a five-man jury for the remainder. La. Code Crim. Proc., Art. 779, as amended, Acts 635 and 647 of 1968. See, Comment, *Jury Trials in Louisiana—Implications of Duncan*, 39 La. L. Rev. 118, 127 (1968). New Jersey amended its disorderly persons statute by reducing the maximum penalty for crimes under it to six months and $500 fine. N.J. Stat. Ann. §2A:169-4, as amended, L. 1968, c. 113.

demeanor.[6] The Court's earlier observation that "(t)he most extensive elimination of the jury prevails in New York,"[7] thus acquires its greatest import at the current time. While the Court has yet to squarely hold that the Sixth Amendment requires a jury trial for crimes punishable by imprisonment for as long as one year,[8] the guidelines set forth in *Duncan* and the line of precedent upon which they are founded clearly point toward such a holding.[9]

In *Duncan*, the Court rendered applicable to the States, the Sixth Amendment's requirement of trial by jury in all prosecutions for serious as distinguished from petty crimes. It held that "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." 391 U. S. at 149. Determination of whether a crime is to be considered serious for Sixth Amendment purposes is to be made primarily by examination of the sentence authorized, which, if severe enough, requires trial by jury. *Ibid.*; see also, *Frank* v. *United States*, 395 U. S. 147, 148 (1969). But where the gravity of the sentence does not itself resolve the "petty-serious" inquiry, the nature of the offense is also to be examined. *District of Columbia* v. *Colts*, 282

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[6] N.Y. Unif. Dist. Ct. Act, §2011; N.Y. Unif. City Ct. Act, §2011. (six-man jury).

[7] *District of Columbia* v. *Clawans*, 300 U.S. 617, 619 (1937).

[8] See, *DeStefano* v. *Woods*, 392 U.S. 631, 633 (1968).

[9] See *The Supreme Court, 1967 Term*, 82 Harv. L. Rev. 93, 153 (1968); Pollock, *Due Process and Jury Trials in State Courts*, 10 Ariz. L. Rev. 492, 499 (1968).

U. S. 63, 73 (1930); *Schick* v. *United States,* 195 U. S. 65, 68 (1904); *Callan* v. *Wilson,* 127 U. S. 540 (1888).

In deciding whether the length of sentence or the seriousness of other punishment is enough *per se* to require a jury trial, reference is to be made to "objective criteria, chiefly the existing laws and practices in the Nation." *Duncan* v. *Louisiana, supra,* 391 U. S. at 161. Since New York City is the only place in the United States where appellant could have been sentenced to a year's imprisonment without a jury trial, it is clear that the summary practice in the City is out of step with that of every jurisdiction in the country, including the remaining counties of New York State.

Applying national criteria to the two year maximum sentence authorized in *Duncan,* the Court first observed that in the federal system, petty offenses were defined as those punishable by no more than six months' imprisonment and $500 fine. 391 U. S. at 161, referring to 18 U. S. C. §1. The federal statute contains three classifications: an offense punishable by death or imprisonment for a term exceeding one year is a felony; any other offense is a misdemeanor, but only a misdemeanor punishable by six months or less and $500 fine is declared to be a petty offense.

In New York, prior to 1967, the classification scheme was virtually identical to the federal. Crimes punishable by more than a year were felonies; those up to a year, misdemeanors; and those up to six months were deemed violations instead of "petty offenses." N. Y. Penal Law of 1909, §2. Even after the 1967 revision of the Penal Law, the same parallel with the federal statute can be drawn.

Felonies are still punishable by more than one year. Class A misdemeanors have a one year maximum. As six month sentences no longer exist, the provisions comparable to the federal petty offense classification would now be, not the class A misdemeanor, but the class B misdemeanor and the violation, punishable by maximums of three months and fifteen days respectively. N. Y. PENAL LAW, §§10.00, 70.15(2)(4). The class A misdemeanor would thus fall into that class of crimes requiring a jury trial in federal court.

Turning to the practice in the various States, the Court found that Louisiana was alone in authorizing imprisonment for up to two years without a trial by jury, and concluded that "existing laws and practices in the Nation" rendered the crime of simple battery of which Duncan was convicted, a serious crime for Sixth Amendment purposes. 391 U. S. at 161.

The Court's analysis in *Duncan* compels the conclusion that a jury trial is mandated in appellant's case. Just as Louisiana's practice was unique in the nation, New York City stands alone as a place where a one year sentence may be imposed without some form of jury trial.[10]

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[10] Appellee has consistently asserted that our analysis is defective because a number of States provide for less than a common law jury for crimes punishable by a year's imprisonment, suggesting thereby that reversal of appellant's conviction would require imposition of a common law jury upon the State of New York and would place a considerable number of States in violation of the Sixth Amendment notwithstanding their provision for some form of jury trial (Appellee's Motion to Affirm, pp. 9-11). This argument is no more meaningful now than it was when urged by the State of Louisiana. *Duncan* v. *Louisiana*, 391 U.S. at 158, n. 30. *Duncan* itself imposed no such requirement. Indeed, the Court noted that its decisions interpeting the Sixth Amendment are always subject to reconsideration. *Ibid.*; *Bloom* v. *Illinois*, 391 U.S. 194, 213

The six-month line of demarcation for petty offenses is not an arbitrary one. Historically, with but few exceptions, it characterized those offenses that were triable summarily:

> "The range and severity of punishment in summary trials has been defined by limiting jurisdiction to the imposition of fines up to a hundred pounds and sentences with hard labor up to six months."
>
> Frankfurter and Corcoran, *Petty Federal Offenses and the Constitutional Guarantee of Trial by Jury*, 39 Harv. L. Rev. 917, 934 (1926).[11]

(1968) (Mr. Justice Fortas, concurring). After the *Duncan* decision, Louisiana itself, in expanding the right to jury trial for crimes punishable by more than six months' imprisonment, concluded that it need only provide some form of jury trial and thus provided for a five-man jury. See fn. 5 *supra*.

Whether the Sixth Amendment right to jury trial is applicable to the States with all of its "bag and baggage" is an issue not presented by this case. It may well be that the consistent efforts of this Court and others to safeguard the jury-selection process furnishes sufficient reason to reconsider prior decisions on the issues of twelve-man composition and unanimity. *Whitus* v. *Georgia*, 385 U.S. 545 (1967) [exclusion of Negroes]; *Hernandez* v. *Texas*, 347 U.S. 475 (1954) [exclusion of Mexican-Americans]; *Labat* v. *Bennett*, 365 F. 2d 698 (5th Cir. 1966), cert. den. 386 U.S. 991 (1967) [exclusion of wage earners]; *White* v. *Crooke*, 251 F. Supp. 401 (M.D. Ala. 1966) [exclusion of women]; see, *Moore* v. *New York*, 333 U.S. 565, 568 (1948) [New York jury selection procedure found not to violate cross-section of community requirement]. Reconsideration of cases such as *Patton* v. *United States*, 281 U.S. 276 (1930) and *Thompson* v. *Utah*, 170 U.S. 343 (1898) need not be urged by appellant in this case. All that appellant requests is that he be entitled to some form of adjudication by his peers. The six-man jury available to every person in New York State outside of New York City is a model easily available.

[11] That some petty offenses were triable summarily which carried sentences ranging from three to twelve months [*District of Columbia* v. *Clawans*, *supra*, 300 U.S. at 626] does not support a conclusion that the concept of petty offense generally known to

Every case decided by this Court which has upheld a classification of an offense as petty has been within the six month upper limit. *Natal* v. *Louisiana*, 139 U. S. 621 (1891); *Schick* v. *United States*, *supra*, 195 U. S. 65; *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966); *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U. S. 216 (1968); *Frank* v. *United States*, *supra*, 395 U. S. 147. Frequently, specific reference has been made to the six month maximum almost as an historical rule of thumb:

> "[W]e may doubt whether summary trial with punishment of more than six months' imprisonment, prescribed by some pre-revolutionary statutes, is admissible without concluding that a penalty of ninety days is too much."
>
> *District of Columbia* v. *Clawans*, 300 U. S. 617, 627-628 (1937).

> "Moreover, in the late 18th century in America, crimes triable without a jury were for the most part punishable by no more than a six month prison term, although there appear to have been exceptions to this rule."
>
> *Duncan* v. *Louisiana*, *supra*, 391 U. S. at 161.

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the framers of the Sixth Amendment was anything other than that to which a maximum of six months was attached. As Frankfurter and Corcoran point out, even crimes punishable by more than twelve months were prosecuted without a jury on occasion; e.g., the burning of houses at night, a felony, punishable by transportation for seven years. 39 Harv. L. Rev. at 927, n. 34. Thus, the fact that at common law some crimes were prosecuted summarily although punishable for more than six months proves too much for no one would contend that a crime such as night-time arson would be prosecutable today without a jury trial. See, Kaye, *Petty Offenders Have No Peers!*, 26 U. Chi. L. Rev. 245, 247 (1959).

Where imprisonment for more than six months has been a possibility, the Court has consistently required a jury trial. *Duncan* v. *Louisiana, supra,* 391 U.S. 145; *Bloom* v. *Illinois, supra,* 391 U.S. 194; *Thompson* v. *Utah,* 170 U.S. 343 (1898). And where crimes which would otherwise be regarded as petty have been made punishable by a year's imprisonment, various courts have held that a jury trial was required. *Ex parte Higashi,* 17 Hawaii 428 (1906) [gambling]; *In re Clancy,* 112 Kan. 247, 210 Pac. 487 (1922) [vagrancy]; *United States* v. *Herzog,* 20 D.C. Rep. (9 Mackey) 430 (1892) [gaming]; *Coates* v. *United States,* 290 Fed. 134 (4th Cir. 1923) [viol. of National Prohibition Act].

That "[a] year's imprisonment is no small matter in any person's life" [12] would seem, therefore, to be well established in this Court's prior decisions, the history of petty offenses, and most significantly, in its universality as a cutoff point throughout the country. It is noteworthy that even prior to the decision in *Duncan,* the American Bar Association, in defining the outer limit of petty offenses, recommended adoption of the federal statutory standard of six months and $500 fine. American Bar Association Project of Minimum Standards for Criminal Justice, STANDARDS RELATING TO TRIAL BY JURY (Tent. Draft, 1968) [hereinafter cited as ABA STANDARDS].

B. EVEN BY THE ERRONEOUS, MORE RESTRICTIVE CRITERIA APPLIED BY THE COURT OF APPEALS, A CRIME SUCH AS JOSTLING IS SERIOUS ENOUGH TO REQUIRE A TRIAL BY JURY.

The decision of the majority below was erroneously based upon criteria different from those required by *Dun-*

[12] *People* v. *Bowdoin, supra,* 57 Misc. 2d at 540, 293 N.Y.S. 2d at 752; see fn. 1 *supra.*

can. Instead of referring to the "existing laws and practices in the Nation" (391 U.S. at 161) the majority considered only the historical practices in New York State, which distinguished between petty and serious crimes by classifying the former misdemeanors, and the latter, felonies (App. 28-30).

Provisions for trial by jury varied greatly, however, among the several colonies right up to the time of the framing of the Constitution. Note, 18 Geo. L.J. 374, 375 (1930); Frankfurter and Corcoran, *supra,* 39 Harv. L. Rev. at 936. By comparison with other colonies, New York relied most heavily for its law enforcement on the summary powers of its magistrates. *Id.* at 944. This strong predilection for summary trials in colonial New York is traceable to the lack of concern of the aristocratic power structure for the rights of the lower classes, the persons most likely to be subjected to such summary dispositions:

> "This partiality for summary procedure is not easy to explain, but we are disposed to attribute it to the sharp distinctions in social and economic status which prevailed in the colony. The democracy which royal governors bewailed was a political, not a social democracy; and the generous imitation of various incidents of oligarchical English local administration tended to enhance class differences. That there was a class which supplied much of the criminal business of the province, the records of the eighteenth century leave us in no doubt. Many a defendant in the city and sometimes in the country was a person without substance, but on the general circumstances which led him into the toils of the law the records are mostly silent. Vagrants and slaves are identified, but how the bulk of the group

was recruited can only be surmised. It seems probable that the transported offenders and the indentured servants made considerable contributions. Certainly the passion for common law due process among the propertied was such that the enactment of summary procedures would have been intolerable unless there was an element sufficiently numerous and not *sui juris* to constitute a problem."

Goebel and Naughton, LAW ENFORCEMENT IN COLONIAL NEW YORK 379 (1944).

In 1824, New York retreated from its expansive view of the magistrate's summary powers and jurisdiction, by providing for juries of six in all misdemeanor cases prosecuted outside of New York City. See *People ex rel. Frank* v. *McCann*, 253 N.Y. 221, 225, 170 N.E. 898, 899 (1930). And in 1878, the New York Court of Appeals found that it could discern no rational basis for denying a six man statutory jury to persons prosecuted for misdemeanors in New York City. In *People ex rel. Murray* v. *Justices*, 74 N.Y. 406, 409, 13 Hun 533 (1878) the court stated:

"No reason is perceived why there should be a distinction in respect to the right to demand the statutory jury of six in the Special Sessions between the city of New York and the other counties of the State. The rule should be uniform, and the right of a trial by such a jury at least is more in accordance with the spirit of our laws than a trial by the Court. The distinction between city and county in this regard is incongruous and unjust, but we have no control over the question."

The perpetuation of summary misdemeanor jurisdiction in New York City in section 40 of the New York City Criminal Court Act is little more than a vestige of New York's harsh colonial policies.

New York's historical experience therefore offers little basis for removing a crime punishable by a year's imprisonment from the protections of the Sixth Amendment. It was an experience unrepresentative of the practice throughout the other colonies, and could not have been within the contemplation of the drafters of the Amendment. Given its aristocratic underpinnings, it is not an experience that is relevant to our time and needs.

The inappropriateness of New York's historical experience with limitations on the right to trial by jury[13] as a reason for continuing to deny jury trials in New York City is exceeded only by the analytical inferiority of the felony-misdemeanor distinction upon which it rests, which was relied upon so heavily by the majority below.

Many years ago, this Court rejected such a test as a method for determining, for Sixth Amendment purposes, the seriousness of a particular offense. *Callan* v. *Wilson*, *supra*, 127 U.S. at 549; *Schick* v. *United States*, *supra*, 195 U.S. at 68; Cf. *Winters* v. *Beck*, 385 U.S. 907 (1966) (Mr. Justice Stewart dissenting from the denial of certiorari). Instead, the proper test was declared to be the nature of the offense and the amount of punishment prescribed, rather than its label in the statute books. *Schick* v. *United States*, *supra*, 195 U.S. at 68. The analytical superiority of the *Schick* rule as recently amplified by the emphasis in *Dun-*

[13] For a concise history of New York's magistrate court experience see Frankfurter and Corcoran, *supra*, 39 Harv. L. Rev. at 944-949.

can and *Frank* upon the punishment authorized, is apparent when applied to the structure of the New York Penal Law. Most, if not all of the crimes punishable as class A misdemeanors are foreign to the concept of "petty offenses" as understood by scholars, the framers of the Constitution and this Court.[14]

The petty offenses known to the framers of the Constitution were crimes of a nuisance nature which did not involve serious immorality. Frankfurter and Corcoran, *supra*, 39 Harv. L. Rev. at 983-1019. They involved matters of "small importance," "trifling nuisances," and "disturbances of good order." 1 STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 123 (1883). Generally, they were offenses of a regulatory nature, *malum prohibitum* rather than *malum in se*, and were not indictable at common law. *Callan* v. *Wilson*, *supra*, 127 U.S. at 553; *Schick* v. *United States*, *supra*, 195 U.S. at 69; *District of Columbia* v. *Colts*, *supra*, 282 U.S. at 73 (1930); *United States* v. *Barnett*, 376 U.S. 681, 748-750 (1964) (Mr. Justice Goldberg, dissenting); *Cheff* v. *Schnackenberg*, *supra*, 384 U.S. at 390 (Mr. Justice Douglas, dissenting). Classic examples of such offenses were disorderliness, drunkenness, vagrancy and violations of health, safety, trade, fish and game regulations. Kalven and Zeisel, THE AMERICAN JURY 16 (1966); 4 BLACK-

[14] At the very outset of its analysis, the court below erred when it stated that "[a]t common law, misdemeanors, crimes punishable by imprisonment for no more than one year, were not indictable offenses, and as such were not afforded jury trials, but rather were tried by the Magistrate alone" (App. 27). At common law an indictment lay for all kinds of inferior crimes of a public nature that were classified as misdemeanors. 1 RUSSELL ON CRIME 6 (12th Ed. 1964); Frankfurter and Corcoran, *supra*, 39 Harv. L. Rev. at 926.

STONE, COMMENTARIES 279-281 (Cooley Ed. 1899); 3 STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 264, 265 (1883).

In contrast, New York's class A misdemeanors include crimes such as conspiracy in the third degree (§105.05);[15] reckless endangerment in the second degree (§120.20); self-abortion in the first degree (§125.55); sexual misconduct (§130.20);[16] sexual abuse in the second degree (§130.60); criminal trespass in the first degree (§140.15); possession of burglar's tools (§140.35);[17] petit larceny (§155.25);[18] theft of services (§165.15); criminal possession of stolen

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[15] In *Callan* v. *Wilson, supra,* 127 U.S. at 556, although petitioner had been sentenced to only a fine of $25 or 30 days imprisonment for the crime of conspiracy, it was said that the offense of conspiracy being indictable at common law was "an offense of a grave character, affecting the public at large, and we are unable to hold that a person charged with having committed it * * * is not entitled to a jury, when put upon his trial."

[16] The Practice Commentary to the New York Penal Law states that "[t]his section represents the basic crimes of rape * * * and sodomy * * * and includes therefore, all of the higher degrees of each of these crimes." Practice Commentary, N.Y. PENAL LAW §130.20, 39 MCKINNEY'S CONSOL. LAWS (1967).

[17] At common law, burglary was always regarded as a serious felony [Perkins, CRIMINAL LAW 149 (1957)], and the offenses of possession of burglar's tools and criminal trespass are said to be component parts of the crime of burglary. State Commission on the Revision of the Penal Law and Criminal Code, PROPOSED NEW YORK PENAL LAW 347 (1964).

[18] The Practice Commentary states that "petit larceny is, in essence, simply the basic crime of larceny." Practice Commentary, N.Y. PENAL LAW, §155.25, 39 MCKINNEY'S CONSOL. LAWS (1967). At common law it was an indictable offense and not considered petty. 4 BLACKSTONE, COMMENTARIES 229 (Cooley Ed. 1899). Accordingly, the Sixth Amendment right to jury trial has been held to attach. *In re Fauldan,* 20 D.C. Rep. [9 Mackey] 433 (1892); *Danner* v. *State,* 89 Md. 220, 42 Atl. 965 (1899).

property in the third degree (§165.40);[19] forgery in the third degree (§170.05); resisting arrest (§205.30); escape in the third degree (§205.05); perjury in the third degree (§210.05); tampering with a witness (§215.10); tampering with a juror (§215.30); criminal contempt (§215.50);[20] criminal possession of a dangerous drug (§220.05);[21] obscenity (§235.05) and disseminating indecent material to minors (§235.21);[22] riot in the second degree (§240.05); inciting to riot (§240.08); endangering the welfare of a child (§260.10) and possession, manufacture, transportation and use of certain weapons and dangerous instruments [§§265.05 (3)(5)(6)(9), 265.10 (1)(2)(4)(5)(7), 265.35 (1)(2)(4)].

Class A misdemeanors also include every attempted class E felony. N.Y. PENAL LAW, §110.05. Thus, attempts to

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[19] Receiving stolen goods was a misdemeanor at common law, prosecuted upon indictment and was always triable by a jury. *United States* v. *Jackson*, 20 D.C. Rep. (9 Mackey) 424, 427 (1892).

[20] Compare *Cheff* v. *Schackenberg*, *supra*, 384 U.S. 373 with *Bloom* v. *Illinois*, *supra*, 391 U.S. 194 and *Dyke* v. *Taylor Implement Co.*, *supra*, 391 U.S. 216.

[21] As the Practice Commentary states, "[t]he lowest degree, here defined, is the basic all-inclusive offense, covering possession of any quantity of a narcotic, depressant, stimulant or hallucinogenic drug." Practice Commentary, N.Y. PENAL LAW, §220.05, 39 McKINNEY'S CONSOL. LAWS (1967). The remaining degrees of the crime are felonious on the basis of whether there is an intent to sell or whether the amount possessed is large enough itself to warrant greater punishment without resorting to the use of presumptions.

[22] Since these crimes involve questions under the First Amendment and are thus determinable by reference to contemporary community standards, they may well require a jury trial regardless of the petty-serious distinction. *Times Film Corp.* v. *Chicago*, 365 U.S. 43, 68-69 (1961) (Warren, C.J., dissenting in an opinion joined by Justices Black, Douglas, and Brennan).

commit crimes such as abortion in the second degree (§125.40), rape in the third degree (§130.25), sodomy in the third degree (§130.40), escape in the second degree (§205.10) and criminal possession of a dangerous drug in the third degree (§220.10) can be tried summarily in New York City. Since these crimes if consummated are serious under New York's own definition, and a person must be "on the verge" of committing one of them to be guilty of attempt,[23] the misdemeanor classification accorded attempted class E felonies furnishes little basis for considering them petty.[24]

The crimes under New York law which parallel those cognizable as petty at common law are found in the class B and violation categories, which include offenses such as fortune telling [§165.35 (class B)]; public lewdness [§245.00 (class B)]; unlawfully using slugs in the second degree [§170.55 (class B)]; unlawfully dealing with fireworks [§270.00 (class B)]; criminal nuisance [§240.45 (class B)]; disorderly conduct [§240.20 (violation)]; exposure of a female [§245.01 (violation)]; loitering [§240.35 (violation)]; public intoxication [§240.40 (violation)]. See Appendix B.

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[23] Practice Commentary, N.Y. PENAL LAW, §110.00, 39 MCKINNEY'S CONSOL. LAWS (1967).

[24] The class A misdemeanors discussed above are only examples of that category. A complete breakdown of the New York Penal Law by category of crime is set forth in Appendix B. What should be most noticeable from our breakdown is that the class A misdemeanor is the most prevalent crime under the Penal Law for while eight categories of crime are defined, about 40% of the conduct defined as criminal is denominated a class A misdemeanor. It includes the lesser degrees of many serious felonies. On the other hand it does not possess the qualities of a regulatory or *malum prohibitum* nature. Serious, morally culpable criminal intent is required for virtually all the crimes of the category as defined in the Penal Law.

The evolution of the crime of jostling itself reflects the contrast drawn between the class A misdemeanor and the class B and violation categories, and shows its seriousness within the structure of New York's Penal Law. Prior to September 1, 1967, jostling was a form of disorderly conduct and carried a six month sentence. N.Y. PENAL LAW OF 1909, §722 (6). Even so, it was regarded as a crime that carried a special stigma. *People* v. *Albo,* 139 Misc. 852, 250 N.Y.S. 167 (Ct. Spec. Sess. 1931). In the Revised Penal Law it was included in Article J, entitled "Offenses Involving Theft" and its punishment raised to one year. N.Y. PENAL LAW, §§165.25, 70.15. By elevating jostling to a class A misdemeanor, the Legislature expressed the view that it should be regarded as far more serious than under prior law:

> "As disorderly conduct under the former Penal Law—an 'offense' not amounting to a 'crime'—jostling was punishable by a prison term of up to six months (§722). If defined as disorderly conduct under the Revised Penal Law, it would be a 'violation', carrying a prison sentence of not more than fifteen days (§§70.15[4], 240.20). The latter penalty would be grossly inadequate for an offense which constitutes the principal weapon against professional pickpockets, who, in New York City, at least, represent a serious menace to the community. In the opinions of many judges, prosecutors and police officials familiar with the pickpocket problem, even the six months maximum sentence of the former Penal Law does not provide sufficient punishment scope, and the three months max-

imum provided for class B misdemeanors by the Revised Penal Law (§70.15[2]) certainly would not."

> Practice Commentary, N.Y. PENAL LAW, §165.25, 39 MCKINNEY'S CONSOL. LAWS OF NEW YORK (1967).

Jostling is one of the several ways in which legislatures have attempted to deal with pickpocketing. See *Note: Pickpocketing: A Survey of the Crime and Its Control,* 104 U. Pa. L. Rev. 408, 419 (1955). Pickpocketing is a form of larceny and was indictable at common law. *Id.* at 409; 4 BLACKSTONE, COMMENTARIES 229-231 (Cooley Ed. 1899). At one time, pickpocketing was a capital offense without benefit of clergy.[25] English law now includes it within the category of larceny from the person,[26] and many States, including New York, treat it in the same fashion, with penalties exceeding one year's imprisonment.[27] Those States which have specific pickpocketing statutes also attach severe penalties to the crime.[28]

In this case the arresting officer actually testified to a consummated grand larceny, by stating that appellant had taken money from a woman's handbag. See N.Y. PENAL LAW §155.30(4). Appellee has acknowledged that although

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[25] 8 Eliz., c. 4 (1565).

[26] Larceny Act, 1916, 6 & 7 Geo. 5, c. 50, §14.

[27] N.Y. PENAL LAW, §155.30; e.g., CONN. STAT. ANN., Tit. 53, §53-56 (0-5 years); IOWA CODE ANN., Tit. 35, §709.6 (0-15 years); NEV. REV. STAT., Tit. 16, §205.270 (1-10 years); MO. STAT. ANN., Ch. 560, §560.161 (2-10 years); NEB. REV. STAT., Ch. 28, §28-505 (1-7 years).

[28] KAN. STAT. ANN., Ch. 21, §21-2422 (0-4 years); OHIO REV. CODE ANN., Tit. 29, §2907.29 (1-5 years).

appellant "was prosecuted merely for jostling, the evidence against him set forth all the elements of the felony of grand larceny, since there was a taking of property from the person of the complainant—from a handbag which she carried." (Appellee's Motion to Affirm, p. 20).

The seriousness of the crime of jostling can also be seen in the manner in which it is treated elsewhere in New York statutory law. For example, under New York's Code of Criminal Procedure, it is one of the crimes which makes a defendant ineligible for bail pending appeal.[29] Jostling is also included with the felonies as one of the suspected crimes that allow an officer to invoke the "stop and frisk" provisions of the law. N.Y. CODE CRIM. PROC. §180-a(1).

The Court of Appeals buttressed its opinion that a class A misdemeanor is not serious by comparing the collateral disabilities of a felony conviction, such as the loss of the right to vote, forfeiture of all public offices and suspension of civil rights, with those which result from a misdemeanor conviction, which it regarded as less significant. However, the vast number of disabilities which flow collaterally from a misdemeanor conviction cannot be so easily disregarded. It is these disabilities that have previously been said to furnish the reason for distinguishing misdemeanors from mere violations and truly petty offenses. See, *People* v. *Letterio*, 16 N.Y. 2d 307, 312, 313, 213 N.E. 2d 670, 672-673 (1965) (Bergan, J. concurring). Cf. *Sibron* v. *New York*, 392 U.S. 45, 55-57 (1968); *Carafas* v. *LaVallee*, 391 U.S. 234, 237 (1968); *Fiswick* v. *United States*, 329 U.S. 211, 222 (1946).

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[29] Section 555(2) of the Code of Criminal Procedure forbids the granting of bail pending appeal to one twice convicted of certain crimes listed in section 552 of the Code. Jostling is one of those crimes and appellant is so situated by virtue of his conviction in this case as to make him non-bailable.

Under New York law, a person convicted of a misdemeanor can be barred from obtaining a license for many professions, such as dentistry, pharmacy, optometry and public accountancy. Appendix C at C-3. See *Barsky* v. *Bd. of Regents*, 305 N.Y. 89, 111 N.E. 2d 222 (1953), aff'd, 347 U.S. 442 (1954). Various occupational licensing requirements explicitly distinguish between conviction for a "high misdemeanor" and other misdemeanors, preventing a class A misdemeanant from becoming, *inter alia*, a stevedore, longshoreman, pier superintendent, hiring agent or checker at the Port Authority. Appendix C at C-1. Under New York City's Administrative Code, employment opportunities are severely restricted by a misdemeanor conviction. Many occupations in the City require licenses which are granted in the discretion of a commissioner, who can require that an applicant be "a fit and proper person." Conviction for a misdemeanor has been held a proper ground for a finding of lack of fitness. *Matter of Dorf* v. *Fielding*, 20 Misc. 2d 18, 197 N.Y.S. 2d 280 (Sup. Ct. 1948); N.Y.C. ADMIN. CODE, Ch. 32, §773a-7.0. A person convicted of a misdemeanor can also be barred from public housing. *Matter of Manigo* v. *New York City Housing Authority*, 51 Misc. 2d 829, 273 N.Y.S. 2d 1003 (Sup. Ct. 1966), aff'd, 27 A.D. 2d 803, cert. den. 389 U.S. 1008 (1967).

Since the overwhelming majority of persons who appear in an urban criminal court such as New York's are members of minority groups and the lower economic classes,[30] exclusion from numerous occupational callings and from public housing is, indeed, a serious consequence, perhaps of even greater concern than loss of suffrage or right to

[30] See, Katz, *Municipal Courts—Another Urban Ill*, 20 Case West. L. Rev. 87, 90 (1968).

public office. See, dissenting opinion of Burke, J. (App. 40, 41).

Reliance on the "public gauge" of what is serious or petty under New York standards alone, leads therefore, as Judge Burke stated in his dissent,

> "to a conclusion opposite to that reached by the majority since that 'public gauge', expressed as it is in reference to the entire State except New York City, indicates that misdemeanors generally (and not just class A misdemeanors) are serious enough to require a jury trial." (App. 41, 42)

As noted by Judge Burke, a more recent expression of public opinion is found in the proposed revision of the State constitution, which would have accorded jury trials to all defendants tried for offenses punishable by more than six months' imprisonment. PROPOSED CONSTITUTION OF THE STATE OF NEW YORK, Art. I, §7b (defeated at referendum, November 7, 1968).[21]

Reduced to its essentials therefore the majority's legal analysis rests on the notion that a jury trial is not consti-

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[21] Article I, section 7b specifically provided that,

> "After January first, nineteen hundred seventy, a defendant shall be tried for all offenses punishable by a term of imprisonment of more than six months but not more than one year, by a jury of not less than six persons, except that such defendant may waive jury trial."

Although the proposed Constitution was defeated, the defeat was due to the more controversial and unrelated portions, primarily those dealing with aid to parochial schools and to the fact that the Constitution was presented to the voters as a single package. N.Y. Times, Nov. 8, 1968, p. 1, col. 8, p. 30, col. 1 (late city ed.); N.Y. Times, Nov. 9, 1968, p. 30, col. 1 (late city ed.).

tutionally required for a misdemeanor prosecuted in New York City and punishable by a year's imprisonment, simply because New York law has never required it. Judge Burke clearly depicted the tautological nature of this criterion:

> "It should be noted that had this narrower reference been used in the *Duncan* case itself, Louisiana could undoubtedly have shown that its people demonstrated their view of the pettiness of 'simple battery' by their longstanding denial of jury trial for a crime in the Louisiana Constitution, even though such crime carried a maximum penalty of two years' imprisonment." (App. 37, fn. 1)

"[T]he historic availability of summary jurisdiction is by no means proof of its desirability in the enforcement of a particular law." Frankfurter and Corcoran, *supra*, 39 Harv. L. Rev. at 982. After *Duncan*, it cannot be deemed an adequate satisfaction of the requirements of the Sixth Amendment.

C. Not Only Are the Conditions to Be Found in New York City's Criminal Courts Improper Grounds for Denying the Right to Jury Trial, They Constitute Compelling Justification for Its Provision.

The majority's final reason for sustaining the statute's denial of a jury trial to appellant was the burden that such a practice would impose on New York City's already crowded criminal court calendars. Such a consideration is an entirely inappropriate reason for withholding a right of such fundamental importance, and it is not an accurate forecast of what would actually occur if jury

trials for class A misdemeanors were ordered.[32] Moreover, rather than detracting from an argument for jury trials, the conditions that abound in our criminal courts today establish their necessity.

Many years ago Blackstone warned against deprecation of the right to jury trial under the guise of expedience:

> "And, however *convenient*, these may appear at first (as doubtless all arbitrary powers well executed, are to most *convenient*), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution . . ."
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> 4 BLACKSTONE, COMMENTARIES 350 (Cooley Ed. 1899).

This Court has said that the right to trial by jury "is not held by sufferance, and cannot be frittered away on any plea of state or ~~political~~ necessity." *Ex Parte Milligan*, 71 U.S. 2, 123 (1866). And as Mr. Justice Black has written,

> "It is undoubtedly true that a judge can dispose of charges . . . faster and cheaper than a jury. But such trifling economies as may result have not generally been thought sufficient reason for abandoning our great

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[32] The Court of Appeals' view is not shared by three of New York City's five District Attorneys who have publicly stated they were in favor of jury trials in misdemeanor cases. The Kings County prosecutor favored jury trials in all cases involving any period of imprisonment. N.Y. Times, Jan. 17, 1969, p. 48, col. 1 (late city ed.).

constitutional safeguards aimed at protecting freedom and other basic human rights of incalculable value. Cheap, easy convictions were not the primary concern of those who adopted the Constitution and the Bill of Rights. Every procedural safeguard they established purposely made it more difficult for the government to convict those it accused of crimes. On their scale of values justice occupied at least as high a position as economy."

Green v. *United States,* 356 U.S. 165, 216 (1958) (Mr. Justice Black, dissenting).

Indeed, this Court's continuous expansion of the rights of the criminal defendant has concomitantly witnessed the rejection, at every turn, of arguments urging limitations *in the definition* of constitutional rights because of already crowded court dockets and claimed additional burdens upon state and municipal resources. E.g., *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Fay* v. *Noia,* 372 U.S. 391 (1963); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *California,* 372 U.S. 353 (1963); *Baxstrom* v. *Herold,* 383 U.S. 107 (1966); *United States* v. *Wade,* 388 U.S. 218 (1967); *Gilbert* v. *California,* 388 U.S. 263 (1967).[33] Because *Duncan*

[33] Whatever considerations have been made as to the burdens upon court calendars have come in the limitation of retroactive application of newly defined constitutional rights. Where this has occurred, consideration of reliance by state officials upon prior decisions of the Court and non-essentiality of the newly declared right to the integrity of the fact finding process have been accorded equal if not greater weight. See, *Stovall* v. *Denno,* 388 U.S. 283 (1967); *Johnson* v. *New Jersey,* 384 U.S. 719 (1966); *Linkletter* v. *Walker,* 381 U.S. 618 (1965); *De Stefano* v. *Woods, supra,* n. 8, 392 U.S. 631.

It is ironic that the most recent example of the rejection of an argument based on court congestion where the right to jury trial

has already established the importance of the right to trial by jury in our constitutional framework, the only proper inquiry in this case is whether a crime punishable by a year's imprisonment is a serious offense within the contemplation of the Sixth Amendment. The nature of New York City's criminal court dockets can shed no light on that issue. The meaning of the Sixth Amendment and Due Process Clause of the Fourteenth does not fluctuate in proportion to the number of persons who seek otherwise justifiable refuge in them. The rights afforded by the Constitution are personal rights "which the State must respect, the benefit of which every person may demand. * * * its safeguards extend to all." *Hill* v. *Texas*, 316 U.S. 400, 406 (1942).

Even if crowded court calendars were a factor that should properly be weighed by the Court in defining a Sixth Amendment right, there is simply no evidence that providing jury trials for persons charged with class A misdemeanors would result in any additional hardship to the city's criminal court system. In every other metropolitan area in the United States, jury trials are provided for crimes punishable by a maximum of a year's imprisonment. Many jurisdictions provide them for crimes pun-

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was involved comes from the New York Court of Appeals. In *People* v. *Fuller*, 24 N.Y. 2d 292, 248 N.E. 2d 17 (1969), the court held section 208 of the New York Mental Hygiene Law violative of the Equal Protection Clause because it denied a jury trial on the issue of addiction to persons criminally convicted while such right was afforded persons civilly committed under section 206 of the law. In *People* v. *Donaldson*, —— N.Y. 2d —— (not yet officially reported) (June 12, 1969), the court held its decision in *Fuller* was fully retroactive and pointed out that in *Fuller* it had rejected the argument that the many jury trials resulting from its holding justified withholding the protection of the Equal Protection Clause from the many seeking it (Slip op., p. 2).

ishable by even lower maximums. Yet there has been no indication that the availability of a jury trial has adversely affected the court system of any municipality. ABA STANDARDS, *supra*, at 22. This is so primarily because the major fact of life in any urban criminal court is the exceptionally heavy incidence of both guilty pleas and jury trial waivers. See Newman, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL 3-4 (1966); Kalven and Zeisel, THE AMERICAN JURY, *supra*, at 19.

In California, which provides its citizens with jury trials for all criminal offenses including traffic violations,[34] it is reported that approximately 3% of all misdemeanor trials in the State are actually conducted before a jury, with the figure rising to slightly more than 10% in Los Angeles. *Ibid.* The percentage of jury trials in Detroit's Recorder's Court is reported as a surprisingly low one of 1/10 of 1%. *Id.* at 18, n. 12.[35]

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[34] CALIF. PENAL CODE, §689 (West, 1956).

[35] A survey conducted by the New York Civil Liberties Union in 1968 of Legal Aid and Public Defender agencies in the largest American cities reveals these percentages of misdemeanor jury trials in the following cities:

Columbus, Ohio—less than 5%
Philadelphia, Pa.—1½%
Minneapolis, Minn.—5%
Pittsburgh, Pa.—5%
Washington, D.C.—15% to 20% of non-felony cases involving punishment of more than six months: 5% to 10% where less than six months.
San Diego, Calif.—30% where punishment over six months; less than 6% where punishment under six months.
San Francisco—.002%

New York Civil Liberties Union, LEGISLATIVE MEMORANDUM #20, pp. 27, 28 (Feb. 6, 1969) [hereinafter referred to as CLU MEMORANDUM #20].

In New York City in 1967, there were 103,706 misdemeanor convictions, many of which were for crimes punishable by no more than six months' imprisonment. Of this number 95,016 or 91.6% were obtained by guilty pleas. Criminal Court of the City of New York, ANNUAL REPORT 1967, 9, 19. Because of the current provision for a three judge trial in all misdemeanor cases if requested by the defendant,[36] much judicial time is consumed on a single case. In 1967, three-judge courts were convened in 11,487 cases. *Id.* at 5. If jury trials were required, the need for a three-judge court would be eliminated, vastly increasing the number of cases triable by the present panel of Criminal Court judges.[37]

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[36] N.Y. City Crim. Ct. Act, §40. Unanimity is not required for conviction by a three judge court. *People* v. *DeCillis*, 14 N.Y. 2d 203, 199 N.E. 2d 380 (1964).

[37] This fact has led the New York Civil Liberties Union to conclude that only six new judges would be needed to implement a jury trial system, an estimate made before the New York legislature added twenty new judges to the New York City Criminal Court. N.Y. JUDIC. LAW §140-a, as amend. L. 1968, ch. 987, McKINNEY'S SESS. LAWS 1970 (1968). The Union reaches its conclusion in the following manner:

> "Let us assume that in New York City the percentage [of jury trials] would be relatively high, say 25%. Since there were 16,491 misdemeanor trials in New York City during 1967, that would mean approximately 4200 (25% of 16,491) trials would be jury trials.
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> The actual working day for most criminal court parts is about 5½ hours.
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> Let us assume that misdemeanor jury trials would take 5 hours as compared with only one hour for nonjury trials. Thus each time a nonjury trial is converted into a jury trial, four extra hours are required. Assuming 4200 such conversions a year, about 16,800 extra work hours would be needed.

That conditions in the New York City Criminal Court, as in lower criminal courts throughout the country, are chaotic, is a fact that cannot be disputed.[38] Indeed, they are an affront to the concept of justice which we believe the people of the State of New York revere. But rather than serving as the excuse for denial of the right to jury trial, these conditions cry out for the establishment of that right.

In New York City, as in other urban areas throughout the nation, the majority of defendants in the criminal courts

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If jury trials were available, however, the need for three-judge courts would be eliminated and more judicial time would be released. * * *

In Brooklyn Criminal Court, three-judge courts meet 232 days a year. In the Bronx, three-judge courts meet 176 days a year. In Queens, they meet 156 days a year; in Manhattan, 260 days; and in Staten Island, 10.

Thus, three-judge courts in New York City meet for a total of 834 work days a year. Assuming 5½ work hours for each work day, three-judge courts meet for 4,587 work hours each year. But since there are three judges, *each* spends 4,587 hours a year sitting on three-judge courts. If jury trials were available and three-judge courts eliminated, then 9,174 (4,587 × 2) hours of judicial time would become available.

Since jury trials for misdemeanors would require 16,800 additional hours, it follows that 9,174 hours of that requirement could be met by the time released through the elimination of three-judge courts.

Thus, only 7,626 additional hours would be required to institute jury trials for misdemeanors. Assuming each judge works 5½ hours in court for 240 work-days per year, each judge works 1,320 hours in court per year.

If each judge works 1,320 hours in court, and 7,626 additional hours are needed, then no more than 6 additional judges would be needed." (CLU MEMORANDUM #20, *supra*, fn. 35, at 28-30.)

[38] Kessler, *Judging the Judges*, The Wall Street Journal, Dec. 7, 1967, p. 1, col. 1; President's Commission on Law Enforcement and Administration of Justice, THE CHALLENGE OF CRIME IN A FREE SOCIETY 128, 129 (1967).

are poor and are either Puerto Rican or Negro.[39] Trial procedures bear little resemblance to those usually associated with due process, and are characterized by an informality which would not be tolerated in a felony trial. Speed, not the pursuit of truth, is the watchword.[40] As elsewhere, the belief is pervasive among the impoverished and minority group residents of the City's ghettos who enter the courtrooms of the Criminal Court either as defendants or as relatives and friends of defendants, that justice is dispensed on an assembly-line basis[41] by judges of predominantly white, middle-class backgrounds who are either unaware of their problems, indifferent to them[42] or actually hostile to them.[43] Many of the New York court system's problems are caused by the judges themselves,

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[39] Wright, *The Courts Have Failed the Poor*, N.Y. Times (Magazine), March 9, 1969, p. 26.

[40] President's Commission on Law Enforcement and Administration of Justice, TASK FORCE REPORT: THE COURTS 30 (1967). Writing of the New York City Criminal Court, one reporter states:

> "At a recent session, Judge (X) kept the calendar moving with the cry, 'Let's go, let's go. I've got to leave here at 12:30 to get to a funeral.' As the judge finished one case and turned to a second, he made certain that the parties involved in a third were handy. 'Stay right where you are, you're next,' he told a waiting policeman. 'We've got seven minutes. Let's go.'" (Kessler, *Judging the Judges, supra*, fn. 38 at p. 1, col. 1 [name in original].)

[41] REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 337 (Bantam Ed. 1968): Wright, *The Courts Have Failed the Poor, supra*, n. 39 at p. 100.

[42] THE CHALLENGE OF CRIME IN A FREE SOCIETY, *supra*, n. 36 at 127, 128; Katz, *supra*, n. 30. 20 Case West L. Rev. at 90-91, 110, 122.

[43] See THE AUTOBIOGRAPHY OF MALCOLM X 149-150 (Grove Press Ed. 1966).

some of whom arrive late and leave early;[44] many of whom have meager legal ability or lack judicial temperament.[45] Even the many qualified and well-intentioned members of the Criminal Court bench are said to become less so because of the nature of the court's work itself:

> "Lawyers and others who observe Criminal Court say that many judges become cynical, bored or weary after years on the bench, that some of them demean rather than uplift the dignity of the proceedings, that many use bail as a punitive weapon and that a decision may depend less on the merits of the case than on the

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[44] The Hon. Edward R. Dudley, Chief Administrative Judge of the Criminal Court of the City of New York recently criticized the contribution of members of the court to calendar delay by the shortness of their hours. The practices observed by the reporter covering the story referred to instances of judges sitting for 2 hours and 54 minutes and 3 hours and 28 minutes during an entire day with 5 hours and 12 minutes being the longest time spent on the bench by a judge in any of six criminal court parts under observation even though the Rules of the Judicial Conference state that daily sessions of the court shall total not less than six hours. N.Y. Times, Feb. 2, 1969, p. 1, col. 6 (late city ed.).

[45] The author of a recent study of the lower criminal courts has written:

> "If my sampling is a fair indication (I simply sat down in courtrooms selected at random around the country and listened) perhaps half of the trial judges are, for one reason or another, unfit to sit on the bench.
>
> * * * * *
>
> [I]n states like Pennsylvania, New York, Kentucky, Texas, Oklahoma, and Indiana, where court problems are especially acute (lawyers, prosecutors, policemen and judges) complain that my estimate of the percentage of incompetent judges is far too low. James, CRISIS IN THE COURTS 4 (1968).

See, also, TASK FORCE REPORT: THE COURTS, *supra*, at 32; *People* v. *Maddaus*, 17 N.Y. 2d 625, 216 N.E. 2d 332 (1966) (Van Voorhis, J. dissenting), cert. den., 385 U.S. 905 (1966).

judge's mood, his opinion of the lawyers involved or the idiosyncrasies of his personality."

Kessler, *Judging the Judges,* The Wall Street Journal, Dec. 7, 1967, p. 1, col. 1.

The vital function of the jury as a protection against such conditions is a major reason for its revered role in our tradition. This is especially so where the volume of cases is heavy. The presence of a jury assures the defendant of a fresh fact-finding body neither wearied nor case-hardened by the number of cases which have preceded his. That the jury is designed to function in this manner has been frequently observed by the Court:

"On many occasions, fully known to the Founders of this Country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices."

Toth v. *Quarles,* 350 U.S. 11, 18, 19 (1955).

"Trial by jury in a court of law and in accordance with traditional modes of procedure . . . has served and remains one of our most vital barriers to governmental arbitrariness."

Reid v. *Covert,* 354 U.S. 1, 10 (1957).

"Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic

reaction of the single judge he was to have it. Beyond this, the jury trial provision in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges."

Duncan v. *Louisiana, supra,* 391 U.S. at 156.

In sum, the argument that provision for jury trials in class A misdemeanor prosecutions in New York City will impose too great a burden upon the court system should be rejected. It is irrelevant to the meaning of the Sixth Amendment and lacks basis in fact. Even aside from Sixth Amendment considerations, the temporary inconvenience caused by the need to make administrative adjustments will be far outweighed by improvement in the quality of justice dispensed. Trial by jury will insulate a defendant faced with a potential loss of a year's liberty from those aspects of the system that have worn so thin as to have lost that compassion and sensitivity for humanity which are integral to our system of justice. Rather than detracting from the effectiveness of the criminal court system, the presence of a jury will secure to it some of the dignity it must have.

II.

Section 40 of the New York City Criminal Court Act Violates the Equal Protection Clause of the Fourteenth Amendment by Denying Defendants Charged With Misdemeanors in New York City the Jury Trial Which Is Granted to Defendants Charged With the Same Crimes in All Other Parts of the State.

The fundamental importance of the right to trial by jury has been clearly established by *Duncan* v. *Louisiana,* 391 U.S. 145 (1968). Of course, if a sentence of a year's imprisonment renders a crime "serious" within the meaning of the Sixth Amendment, then a jury trial will be required through the Due Process Clause of the Fourteenth Amendment regardless of New York's attempt to justify its territorial discrimination. But even if the Sixth Amendment does not apply, the right to jury trial afforded to all persons charged with misdemeanors outside New York City is still a fundamental right for purposes of the Equal Protection Clause. Cf. *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942); *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963); *Developments in the Law—Equal Protection,* 82 Harv. L. Rev. 1065, 1130-1132 (1969).

Had appellant been accused of the crime of jostling in any city, town or village in the State of New York other than New York City, he would have been entitled to a jury trial under New York law. N.Y. Unif. Dist. Ct. Act, §2011; N.Y. Unif. City Ct. Act, §2011. But section 40 of the New York City Criminal Court Act prohibits jury trials for misdemeanors in the City of New York. The Court of Appeals sustained this discrimination against New York City de-

fendants, stating that it would be constitutional even if there were no reasonable basis for it, but found a basis in the heavy caseload in the City's criminal courts.

A State cannot, however, discriminate among its citizens on geographic grounds alone in granting as important a right as trial by jury, and the caseload of the New York City Criminal Court does not provide a constitutionally sound rationale for approving that discrimination.

Despite *dicta* to the effect that "[t]he Equal Protection Clause relates to equality between persons as such rather than between areas," and that "territorial uniformity is not a constitutional requisite" [*Salsburg* v. *Maryland,* 346 U.S. 545, 551-552 (1954)] the court's reliance on *Salsburg* and its predecessor, *Missouri* v. *Lewis,* 101 U.S. 22 (1879) was misplaced. Such broad language was unnecessary to the disposition of the issue in either of those cases, and its implications have been limited by more recent decisions.

In *Missouri* v. *Lewis,* a statute that provided a different appellate court for appeals from circuit courts in the City of St. Louis and its adjoining counties than for the rest of the State was held not to violate the Equal Protection Clause. The multiplication of courts in a metropolitan area as large as St. Louis, requiring adjustment of appellate jurisdictions, was reasonable and of relatively little harm to litigants. 101 U.S. at 33. No person in any county was denied the right to an appeal. Thus, as the dissent below pointed out, that decision would be support for the majority's conclusion only "if Missouri had denied appeals from St. Louis courts while providing for them from courts in all other parts of the State of Missouri" (App. 46).

In *Salsburg* v. *Maryland,* the Court upheld a statute which rendered illegally seized evidence admissible in

gambling prosecutions in Anne Arundel County, while prohibiting its use in all other counties in the State. The decision was based not only on the broad language in *Missouri* v. *Lewis, supra,* 101 U.S. at 31, permitting territorial variation, but also on the fact that the exclusionary rule was then only a rule of evidence, not constitutionally mandated, about which many jurisdictions were in disagreement. 346 U.S. at 550-551. As long as the exclusionary rule remained a "rule of practice" it was "peculiarly discretionary with the law-making authority." *Ibid.*

Aside from the effect on *Salsburg* of *Mapp* v. *Ohio,* 367 U.S. 643 (1961), which gave the exclusionary rule constitutional dimension, the relevance of *Salsburg* to a case such as this, involving a right that cannot be described as a mere "rule of practice" must be viewed as severely limited. Cf. *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649, 658, fn. 29 (E.D. La., 1961), aff'd, 368 U.S. 515 (1962). While the exclusionary rule owes its recently acquired constitutional status to its utility as a means of enforcing the Fourth Amendment, the right to trial by jury has a uniquely cherished place in common law tradition, and has never been regarded as a mere "rule of practice." This Court's decision in *Duncan* v. *Louisiana* rests on the belief that "trial by jury is fundamental to the American scheme of justice." 391 U.S. at 149.

In *Salsburg,* the Court also gave much weight to the desirability of permitting a State to experiment with various methods of dealing with professional gambling, a problem of special severity in Anne Arundel County. In contrast with *Salsburg,* New York's permanent denial of jury trials in New York City is a refusal to experiment with a

mode of trial recognized and highly valued in the rest of the State. *Lewis* and *Salsburg*, therefore, rest on findings of adequate functional justifications for the territorial differences sustained by them and establish only that territorial uniformity is not an *absolute* constitutional requisite. See Horowitz and Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State*, 15 U.C.L.A. L. Rev. 787, 791-792 (1968).

Recent decisions of the Court also undermine the majority's assumption that a legislature has a free hand to discriminate territorially as long as the classification it makes is reasonable. Where rights of fundamental public importance are involved, geographic or other classifications will no longer satisfy the Equal Protection Clause merely because they have a rational basis.

In *Reynolds* v. *Sims*, 377 U.S. 533 (1964), this was shown by the Court's invalidation of Alabama's geographic apportionment plan, even though the plan was not lacking in rationality. *Id.* at 575. Rather, the Court wrote that "the fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." *Id.* at 567. In *Harper* v. *Virginia Board of Electors*, 383 U.S. 663 (1966) the poll tax was held to violate the Equal Protection Clause even though it was not totally irrelevant to the purpose of insuring a qualified electorate. *Id.* at 667 (Mr. Justice Black dissenting). And in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), the Court explicitly rejected the use of the rational basis test where a fundamental right was involved, stating that "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* govern-

mental interest, is unconstitutional." *Id.* at 634. Cf. *Williams* v. *Rhodes,* 393 U.S. 23, 31 (1968); *Carrington* v. *Rash,* 380 U.S. 89, 92 (1965).

Even when derived from a State Constitution rather than the Sixth Amendment, the right to trial by jury is by its very nature a critical and justly cherished right. See *Duncan* v. *Louisiana, supra,* 391 U.S. at 152-153, 156. Just as a State may not discriminate in granting the right to appeal, though it need not grant it at all [*Griffin* v. *Illinois,* 351 U.S. 12 (1956)], it should not be permitted to discriminate in granting the right to trial by jury by conferring it on some, but not on others solely because of geography. As was stated in *Baxstrom* v. *Herold,* 383 U.S. 107 (1966):

> "It follows that the State, having made this substantial review proceeding generally available on this issue, may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily withhold it from some." (*Id.* at 111.)

In this case, the State of New York has made jury trials available to all persons accused of the crime of jostling (as well as all other misdemeanors), except those in New York City. Yet a person prosecuted in New York City stands in the same posture before the State's bar of justice as his upstate counterpart. Each is charged with violation of the same statute, and prosecuted by the People of the State of New York. Each is subject to the same authorized penalties and collateral consequences. When the interests of two defendants are so identical the Equal Protection Clause is not satisfied where the mode of each man's trial depends on the location in which he is tried:

"Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.'"

Griffin v. *Illinois, supra,* 351 U.S. at 17.

"[T]he concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged."

Reynolds v. *Sims, supra,* 377 U.S. at 565.

The Court of Appeals' adherence to a mere "rational basis" test is neither consistent with this Court's more recent exposition of the meaning of the Equal Protection Clause nor responsive to its admonition that,

"The Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are constitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time to be the limits of fundamental rights (citation omitted). Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change."

Harper v. *Virginia Board of Electors, supra,* 383 U.S. at 669.

The "burden-on-the-courts" argument relied on so heavily below as a basis for denying jury trials in New York City, has already been discussed at length in Point I of this brief.

We believe we have shown the argument to be unsubstantiated and therefore, in the context of the Equal Protection Clause, unworthy of being deemed a rational basis for the statute's discrimination against persons in New York City. *A fortiori*, it does not provide the State with a compelling interest justifying the further denial of jury trials in New York City. If any burden actually resulted from requiring jury trials, it would be no more than a financial one, related to the expense of providing additional space and personnel. Although the State has a cognizable interest in economizing, this Court has held that the saving of costs "cannot justify an otherwise invidious classification." *Shapiro* v. *Thompson, supra*, 394 U.S. at 633.

Conclusion

WHEREFORE, for the foregoing reasons, appellant prays the judgment below be reversed.

Respectfully submitted,

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APPENDICES

Wherefore, for the foregoing reasons, appellant prays the judgment below be reversed.

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APPENDIX A

Survey of Jury Trial Laws and Practices in the Nation*

The following twenty-eight states and the federal jurisdiction guarantee a right to trial by jury in any case where a defendant is charged with an offense punishable by more than six months' imprisonment. In each of these jurisdictions, the defendant is entitled to a twelve-man unanimous jury:

ALABAMA: Constitution, Art. 1, §§6, 11; Ala. Code Ann. tit. 7, §264, tit. 13, §§126, 326, 327, 417, 423, 424, 429 (1958), 428 (Supp. 1967), tit. 15, §§321, 327 (1958); *Collins* v. *State,* 88 Ala. 212, 7 So. 260 (1890).

ARIZONA: Constitution, Art. 2, §§23, 24; Ariz. Rev. Stat. §§12-123, 21-102, 22-320, 22-402, 22-425 (1956), 21-103, 22-301 (Supp. 1967); Ariz. R. Crim. P., Rule 300.

CALIFORNIA: Constitution, Art. 1, §7; Cal. Pen. Code Ann. §§1042, 1140 (1956); *Ex parte Wong Yon Ting,* 106 Cal. 296, 39 Pac. 627 (1895); *People* v. *Howard,* 211 Cal. 322, 295 Pac. 333 (1930).

COLORADO: Constitution, Art. II, §§16, 23; Colo. Rev. Stat. Ann. §§39-7-20, 78-7-4 (1963); Colo. R. Crim. P., Rule 23(b).

CONNECTICUT: Constitution, Art. 1, §§8, 19; Conn. Gen. Stat. Ann. §§51-266, 54-82 (1968).

HAWAII: Constitution, Art. 1, §11; Hawaii Rev. Stats. §§635-26, 701-2, 604-8 (Supp. 1968).

IDAHO: Constitution, Art. 1, §§7, 13; Idaho Code Ann. §§1-1406, 18-113 (1948), §2-105 (Supp. 1967).

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* To a great extent, this survey was compiled by reference to Appendix A of Appellee's brief in *Matter of Hogan* v. *Rosenberg* in the New York Court of Appeals and to Appendix D of the jurisdictional statement in *Puryear* v. *Hogan,* No. 2199, Misc. Oct. Term, 1968.

ILLINOIS: Constitution, Art. II, §§5, 9; Ill. Ann. Stat. ch. 78, §§20, 23 (Smith-Hurd 1966); *People* v. *Lobb*, 17 Ill. 2d 287, 161 N.E. 2d 325 (1959).

INDIANA: Constitution, Art. 1, §13; Ind. Stat. Ann. §§9-1501, 9-1811 (1956), §§4-303, 4-5904 (1968).

KANSAS: Constitution, Bill of Rights, §§5, 10; Kan. Stat. Ann. §§62-1401, 62-1412, 62-1501, 63-101, 63-302, 63-303, 63-305, 63-307 (1964).

MINNESOTA: Constitution, Art. 1, §§4, 6; Minn. Stat. Ann. §§593.01, 633.02, 633.10, 633.12 (1947); *State* v. *Everett*, 14 Minn. 439 (Gil. 330) (1869).

MISSISSIPPI: Constitution, Art. 3, §§26, 27, 31, Art. 6, §171; Miss. Code Ann. §§1428, 1831, 1836, 1839, 2562 (1957), §1604 (Supp. 1964), §1615 (Supp. 1966).

MISSOURI: Constitution, Art. 1, §§18(a), 22(a); Mo. Rev. Stat. §§543.010, 543.200, 543.210, 543.250, 546.390 (1953).

MONTANA: Constitution, Art. 3, §§16, 23, Art. 8, §11; Mont. Rev. Codes Ann. §§11-1602, 11-1603, 11-1702 (1957), §94-116 (1964); Mont. Code Crim. Proc. §§95-302, 95-303, 95-1901(c), 95-1905, 95-1915(a), 95-2004, 95-2005, 95-2006 (1968).

NEBRASKA: Constitution, Art. I, §§6, 11, Art. V, §§16, 18; Neb. Rev. Stat. Ann. §18-205 (1962), §§29-604, 29-605 (1964), §29-601 (Supp. 1967).

NEVADA: Constitution, Art. I, §3; Nev. Rev. Stat. §§4.370, 175.011, 175.021, 175.481, 266.540, 266.550, 266.555 (1967).

NEW JERSEY: Constitution, Art. I, pars. 9, 10; N.J. Stat. Ann. §§2A:3-4, 2A:3-5, 2A:74-1, 2A:74-2, 2A:169-4, as amended, L. 1968, ch. 113.

NEW MEXICO: Constitution, Art. II, §§12, 14; N.M. Stat. Ann. §§36-2-5, 36-5-16, 36-5-17, 36-5-18, 36-12-3, 40A-1-11 (1964).

NORTH DAKOTA: Constitution, Art. I, §§7, 13; N.D. Cent. Code Ann. §§29-17-12, 29-22-14, 33-12-19, 33-12-25 (1960), §§40-18-15, 40-18-16, 40-18-17 (Supp. 1968).

OHIO: Constitution, Art. I, §§5, 10; Ohio Rev. Code Ann. §§2938.06, 2945.17 (1954), §§1913.09, 2945.77 (Supp. 1966).

PENNSYLVANIA: Constitution, Art. I, §§6, 9; Pa. Stat. Ann. tit. 17, §1142; *Commonwealth* v. *Widmeyer,* 149 Pa. Super. 91, 26 A.2d 125 (1942); *Commonwealth* v. *Fugmann,* 330 Pa. 428, 198 Atl. 99 (1938).

SOUTH DAKOTA: Constitution, Art. VI, §§6, 7; S.D. Code §§16-11-32, 16-11-33, 16-11-34, 16-12-9, 23-2-11, 23-44-19, 24-43-20.

TENNESSEE: Constitution, Art. I, §§6, 8, 9; Tenn. Code Ann. §§39-105, 40-2001 (1935), §40-2504 (Supp. 1968); *Memphis* v. *Trigally,* 46 Tenn. 382 (1869); *Woods* v. *State,* 99 Tenn. 182, 41 S.W. 811 (1897).

VERMONT: Constitution, Ch. 1, Arts. 10, 12; Vt. Stat. Ann. tit. 13, §1 (1958); *State* v. *Hirsch,* 91 Vt. 330, 100 Atl. 877 (1916).

WASHINGTON: Constitution, Art. I, §§21, 22; Wash. Rev. Code Ann. §§2.36.050, 3.20.040, 10.49.020 (1961), §§3.50.020, 3.50.280, 3.50.410, 3.66.010, 3.66.060 (Supp. 1967).

WEST VIRGINIA: Constitution, Art. 3, §14; W. Va. Code Ann. §50-18-7 (1966).

WISCONSIN: Constitution, Art. I, §§5, 7; Wis. Stat. Ann. §957.01 (Supp. 1967), §959.01 (1963); *Rothbauer* v. *State,* 22 Wis. 468 (1868).

WYOMING: Constitution, Art. 1, §§9, 10, Art. 5, §§10, 22; Wyo. Stat. Ann. §§5-123, 5-130, 5-133, 5-135, 7-409, 7-420, 7-427, 7-448 (1957).

FEDERAL GOVERNMENT: 18 U.S.C. §1.

The following eight states guarantee a right to trial by jury in any case where a defendant is charged with an offense punishable by more than six months' imprisonment. In each of these states, the defendant is entitled to a *de novo* trial by jury only upon an appeal from a judgment of conviction:

ARKANSAS: Constitution, Art. 2, §§7, 10; Ark. Stat. Ann. §§22-709, 22-737, 26-301, 26-608, 26-612, 26-620, 41-106, 43-1901, 43-1902, 43-2160, 44-210, 44-509 (1964). (No jury provided in municipal courts, which have jurisdiction of misdemeanors carrying a maximum penalty of one year's imprisonment. Upon conviction, the defendant may appeal to the circuit court where he is entitled to a trial *de novo* before a common law jury.)

DELAWARE: Constitution, Art. 1, §§4, 7, Art. 4, §§28, 30; Del. Code Ann. tit. 10, §4519 (1953); Del. Super. Ct. (Crim.) R. 23, 31(a); Del. Code Ann. tit. 10, §§1581, 1681, tit. 11, §§5501, 5601, 5901 (Supp. 1966). (In the Sussex and Kent County Courts of Common Pleas, which have jurisdiction of misdemeanors, a defendant may demand a jury of twelve. In the New Castle County Court of Common Pleas, however, misdemeanors [some of which carry a maximum penalty of as much as seven years' imprisonment] are tried without a jury, the defendant having a right to appeal his conviction to the Superior Court where the matter is tried *de novo* before a jury of twelve.)

MAINE: Constitution, Art. I, §§6, 7; Me. Rev. Stat. Ann. tit. 4, §152 (Supp. 1968), tit. 15, §§1, 451 (1965); Me. R. Crim. P. 23(b), 31(a); *Sprague* v. *Androscoggin*, 104 Me. 352, 71 Atl. 1090 (1908); letter dated December 17, 1968, from Maine Attorney General's office to New York County District Attorney's office. (Maine district courts try misdemeanors—crimes punishable by a sentence of up to one year—without a

jury. A defendant may appeal his conviction to the Superior Court, however, where he is entitled to a common law jury.)

MARYLAND: Constitution, Declaration of Rights, Arts. 5, 21; Md. Ann. Code, Art. 51, §18, Art. 52, §13 (1968), Art. 66-1/2, §§48, 74, 75, 216, 325 (1967), §327 (Supp. 1968); Md. Rules P. 743, 758. (Trial by jury is not afforded in motor vehicle cases in the first instance even though some motor vehicle offenses carry a penalty of up to five years' imprisonment.)

MASSACHUSETTS: Constitution, Pt. 1, Art. XII; Mass. Gen. Laws Ann. ch. 212, §6 (1958), ch. 218, §26 (Supp. 1968), §27 (1958), ch. 234, §26A, 34 (1959), §26B (Supp. 1968), ch. 263, §6 (1959), ch. 278, §18 (1959). (The district courts and the Municipal Court of Boston try, without a jury, all misdemeanors, except conspiracies and libels, and all felonies punishable by up to five years' imprisonment. The sentences imposed by these courts, however, may not exceed two and one-half years and may not be in the penitentiary. Upon appeal to the Superior Court, a defendant is entitled to a trial *de novo* before a jury of twelve.)

NEW HAMPSHIRE: Constitution, Pt. 1, Arts. 15, 16, Pt. 2, Art. 77; N.H. Rev. Stat. Ann. §599.1 (Supp. 1967), §§502-A:11, 502-A:12 (1968). (District and municipal courts try, without a jury, misdemeanors carrying a maximum term of imprisonment of one year. The defendant in these courts has an absolute right of appeal to the Superior Court where he may demand a jury of twelve in his trial *de novo*.)

NORTH CAROLINA: Constitution, Art. I, §13; *State* v. *Emery*, 224 N.C. 581, 31 S.E. 2d 858 (1944); N.C. Gen. Stat. Ann. §§7A-272(a), 7A-196(e), 14-3 (Supp. 1967). (District courts have jurisdiction to try, without a jury, all offenses below the grade of felony. Such offenses

are denominated petty misdemeanors and the maximum sentence which may be imposed is a fine or two years' imprisonment. Upon appeal, the defendant is entitled to a trial *de novo* by a jury of twelve.)

RHODE ISLAND: Constitution, Art. 1, §§10, 15; R. I. Gen. Laws §§9-10-12, 12-3-1, 12-17-1, 12-22-1, 12-22-9 (1956); *State* v. *Nolan,* 15 R.I. 529, 10 Atl. 481 (1887). (There are no juries in the district courts, which have jurisdiction of misdemeanors, i.e., crimes punishable by a fine of up to $500 or imprisonment for up to one year or both. A defendant may appeal his conviction to the Superior Court where he is entitled to a trial *de novo* before a jury of twelve.)

The following fourteen states guarantee the right to trial by jury for the trial of criminal offenses punishable by more than six months' imprisonment. In each case a jury of fewer than twelve jurors is authorized:

ALASKA: Constitution, Art. I, §11; Alaska Stat. Ann., §§11.75.030, 22.15.060, 22.15.150 (1962). (Jury of six in district magistrate's courts which have jurisdiction of misdemeanors punishable by up to one year's imprisonment).

FLORIDA: Constitution, Declaration of Rights, §§3, 11, Art. V, §22; Fla. Stat. §§913.10, 919.09 (1967). (Twelve jurors in capital cases; six jurors in all other cases).

GEORGIA: Constitution, Art. I, §2-105, Art. VI, §2-5101, Art. VI, §2-3601; Ga. Code Ann. §26-101, 27-2506 (1965); Ga. Laws 1890-91, pp. 935, 939. (In county criminal courts, which have jurisdiction of misdemeanors, i.e., cases in which the maximum sentence imposable is a fine of up to $1000 or imprisonment for a term of up to twelve months or both, defendant may demand a jury trial. Depending upon the county, however, a jury ranges in size from five to twelve persons.

The Criminal Court of Atlanta, for example, tries misdemeanors with juries of five. In Hall County the same crimes are tried by juries of twelve.)

Iowa: Constitution, Art. 1, §§9, 10; Iowa Code Ann., §§602.15, 602.25, 602.39, 687.7 (1950). (Jury of six in municipal courts which have jurisdiction of misdemeanors carrying a maximum fine of $500 or imprisonment for one year or both.)

Kentucky: Constitution, §§7, 11, 248; Ky. Rev. Stat. Ann., §§25.010, 25.035, 26.400, 29.015 (1963). (Misdemeanors carrying a maximum penalty of $500 or twelve months' imprisonment are tried in inferior courts by a jury of six.)

Louisiana: La. Code Crim. Proc., Art. 779, as amended, Act 635 of 1968; letter dated December 13, 1968, from the office of the Louisiana Attorney General to the office of the New York County District Attorney. (As a result of the *Duncan* decision, the 1968 Regular Session of the Louisiana Legislature reduced the penalties of some of its misdemeanors to a term of not more than six months' imprisonment. In addition, the Code of Criminal Procedure was amended to provide for a five-member jury trial in all cases where the maximum penalty may exceed six months' imprisonment.)

Michigan: Constitution, Art. I, §§14, 20; Mich. Comp. Laws Ann., §§730.264, 730.267, 730.412, 730.551 (1968). (Defendants may demand a jury of six in city municipal courts which have jurisdiction of misdemeanors carrying a maximum penalty of $500 or one year.)

New York: Constitution, Art. 1, §2, Art. 6, §18a; N.Y. Uniform District Court Act, §2011; N.Y. Uniform City Court Act, §2011. (In counties outside New York City, a defendant may demand a jury of six for the trial of misdemeanors which are punishable by up to one year's imprisonment.)

OKLAHOMA: Constitution, Art. 2, §§19, 20; Okla. Stat. tit. 11, §§958.3, 958.6, tit. 21, §10 (1961). (Jury of six in the county courts and other courts not of record, which have jurisdiction of misdemeanors carrying a maximum penalty of one year's imprisonment.)

OREGON: Constitution, Art. I, §11; Constitution (orig.), Art. VII, §12; Ore. Rev. Stat., §5.110 (Supp. 1967), §§46.040, 46.175, 46.180 (1967). (Jury of six in county courts, which have jurisdiction of all crimes except those carrying the death penalty or life imprisonment. Jury of six in district courts, which have jurisdiction of all misdemeanors wherein the prescribed punishment does not exceed $3000 or one year's imprisonment.)

SOUTH CAROLINA: Constitution, Art. I, §§18, 25, Art. V, §22; S.C. Code, §§15.629.16, 15.629.21 (Supp. 1967). (A jury of six is provided in the county courts, which have jurisdiction of all criminal cases except murder, manslaughter, rape, attempt to commit rape, arson, common law burglary, bribery and perjury. A sentence of up to ten years' imprisonment may be imposed.)

TEXAS: Constitution, Art. 1, §§10, 15, Art. 5, §§15, 16, 17, 29; Tex. Civil Code Ann., Art. 2191 (1964); Tex. Code Crim. Proc., Arts. 4.06, 37.03 (1966). (In the county courts, which have jurisdiction of misdemeanors carrying a maximum sentence of two years' imprisonment, defendants may demand a jury which consists of six persons.)

UTAH: Constitution, Art. I, §§10, 12; Utah Code Ann., §78-46-5 (1953). (Jury of twelve in capital cases and jury of eight in all other criminal cases in the district courts, which have jurisdiction of both felonies and misdemeanors.)

VIRGINIA: Constitution, Art. 1, §§8, 11; Va. Code Ann., §19.1-206 (1960), §§18.1-6, 18.1-9 (1961). (Jury of five

for trial of misdemeanors which carry a maximum penalty of $500 and/or twelve months' imprisonment.)

The following four states guarantee a trial by jury in any case where a defendant is charged with an offense punishable by more than six months' imprisonment. In each of these states, a non-unanimous verdict is authorized:

LOUISIANA: Constitution, Art. 7, §41; La. Code Crim. Proc. Art. 782 (A nine-twelfths verdict is authorized in felony cases.)

OKLAHOMA: Constitution, Art. 2, §§19, 20; Okla. Stat. tit. 11, §§958.3, 958.6, tit. 21, §10 (1961). (In misdemeanor cases, those in which a sentence of up to one year's imprisonment may be imposed, in courts of record, a defendant may demand a jury of twelve; nine members of the jury may render a verdict. For the same crimes tried in courts not of record, the defendant may demand six jurors, five of whom may render a verdict.)

OREGON: Constitution, Art. I, §11; Ore. Rev. Stat. §17.105 (1965). (A jury of twelve in the circuit courts must render a unanimous verdict in cases of murder in the first degree; in all other cases a ten-twelfths verdict is authorized.)

TEXAS: Constitution, Art. 5, §13; Tex. Code Crim. Proc. Art. 37.02 (1966). (In misdemeanor cases tried in the district courts a verdict may be rendered by nine of, or ten of eleven jurors if one or more of the twelve jurors have been discharged after the cause has been submitted to the jury.)

The following is the only jurisdiction in which a defendant charged with an offense punishable by more than six months' imprisonment is denied his right to trial by jury:

NEW YORK CITY: N.Y. Constitution, Art. 6, §18; N.Y.C. Criminal Court Act, §§31, 40.

APPENDIX B

Breakdown of the New York Penal Law by Category of Crime*

Class A Felony	*Penal Law Section*
Murder	125.25
Kidnapping in the first degree	135.25
Class B Felony	
Attempted murder or kidnapping in the first degree	110.05(1)
Manslaughter in the first degree	125.20
Rape in the first degree	130.35
Sodomy in the first degree	130.50
Kidnapping in the second degree	135.20
Burglary in the first degree	140.30
Arson in the first degree	150.15
Robbery in the first degree	160.15
Criminally selling a dangerous drug in the first degree	220.40
Class C Felony	
Conspiracy in the first degree	105.15
Attempt to commit a class B felony	110.05(2)
Criminal facilitation	115.05
Assault in the first degree	120.10
Manslaughter in the second degree	125.15
Rape in the second degree	130.30
Sodomy in the second degree	130.45
Burglary in the second degree	140.25
Arson in the second degree	150.10
Grand larceny in the first degree	155.40

* This breakdown does not include crimes defined outside the Penal Law such as violations of the Vehicle and Traffic Law and Public Health Law.

	Penal Law Section
Robbery in the second degree	160.10
Forgery in the first degree	170.15
Criminally possessing a forged instrument in the first degree	170.30
Criminally possessing a dangerous drug in the first degree	220.20
Criminally selling a dangerous drug in the first degree	220.35
Promoting prostitution in the first degree	230.30
Class D Felony	
Criminal solicitation in the first degree	100.10
Attempt to commit a class C felony	110.05(3)
Assault in the second degree	120.05
Reckless endangerment in the first degree	120.25
Abortion in the first degree	125.45
Rape in the second degree	130.30
Sodomy in the second degree	130.45
Sexual abuse in the first degree	130.65
Coercion in the first degree	135.65
Burglary in the third degree	140.20
Criminal mischief in the first degree	145.10
Grand larceny in the second degree	155.35
Robbery in the third degree	160.05
Criminal possession of stolen property in the first degree	165.50
Forgery in the second degree	170.10
Criminally possessing a forged instrument in the second degree	170.25
Criminally possessing forgery devices	170.40
Tampering with public records in the first degree	175.25
Bribing a labor official	180.15
Bribe receiving by a labor official	180.25
Sports bribing	180.40

	Penal Law Section
Bribery	200.00
Bribe receiving	200.10
Bribe giving for public office	200.45
Bribe receiving for public office	200.50
Escape in the first degree	205.15
Hindering prosecution in the first degree	205.65
Perjury in the first degree	210.15
Bribing a witness	215.00
Bribe receiving by a witness	215.05
Bribing a juror	215.15
Bribe receiving by a juror	215.20
Criminally possessing a dangerous drug in the second degree	220.15
Criminally selling a dangerous drug in the third degree	220.30
Promoting prostitution in the second degree	230.25
Possession of weapons and dangerous instruments	265.05(1)(2)(8)
Manufacture, transport, disposition and defacement of certain weapons and dangerous instruments	265.10(1)(2)(3)(6)
Prohibited use of weapons	265.35(3)

Class E Felony

Conspiracy in the second degree	105.10
Attempt to commit a class D felony	110.05(4)
Promoting a suicide attempt	120.30
Criminally negligent homicide	125.10
Abortion in the second degree	125.40
Rape in the third degree	130.25
Sodomy in the third degree	130.40
Unlawful imprisonment in the first degree	135.10
Custodial interference in the first degree	135.50
Substitution of children	135.55
Criminal mischief in the second degree	145.05

	Penal Law Section
Criminal tampering in the first degree	145.20
Arson in the third degree	150.05
Grand larceny in the third degree	155.30
Unlawful use of secret scientific material	165.07
Criminal possession of stolen property in the second degree	165.45
Unlawfully using slugs in the first degree	170.60
Falsifying business records in the first degree	175.10
Offering a false instrument for filing in the first degree	175.35
Issuing a false certificate	175.40
Sports bribe receiving	180.45
Unlawfully concealing a will	190.30
Criminal usury	190.40
Rewarding official misconduct	200.20
Receiving reward for official misconduct	200.25
Escape in the second degree	205.10
Promoting prison contraband in the first degree	205.25
Bail jumping in the first degree	205.40
Hindering prosecution in the second degree	205.60
Perjury in the second degree	210.10
Making an apparently sworn false statement in the first degree	210.40
Tampering with physical evidence	215.40
Criminally possessing a dangerous drug in the third degree	220.10
Promoting gambling in the first degree	225.10
Possession of gambling records in the first degree	225.20
Riot in the first degree	240.00
Criminal anarchy	240.15
Eavesdropping	250.05
Bigamy	255.15
Incest	255.25

	Penal Law Section
Abandonment of a child	260.00
Prohibited use of weapons	265.35(3)
Class A misdemeanor	
Criminal solicitation in the second degree	100.05
Conspiracy in the third degree	105.05
Attempt to commit a class E felony	110.05(5)
Criminal facilitation in the second degree	115.00
Assault in the third degree	120.00
Reckless endangerment in the second degree	120.20
Self abortion in the first degree	125.55
Sexual misconduct	130.20
Sexual abuse in the second degree	130.60
Unlawful imprisonment in the second degree	135.05
Custodial interference in the second degree	135.45
Coercion in the second degree	135.60
Criminal trespass in the first degree	140.15
Possession of burglar's tools	140.35
Criminal mischief in the third degree	145.00
Petit larceny	155.25
Misapplication of property	165.00
Unauthorized use of a vehicle	165.05
Theft of services	165.15
Fraudulently obtaining a signature	165.20
Jostling	165.25
Fraudulent accosting	165.30
Criminal possession of stolen property in the third degree	165.40
Forgery in the third degree	170.05
Criminal possession of a forged instrument in the third degree	170.20
Criminal simulation	170.45
Falsifying business records in the second degree	175.05
Tampering with public records in the second degree	175.20

	Penal Law Section
Offering a false instrument for filing in the second degree	175.30
Issuing a false financial statement	175.45
Presenting a false insurance claim	175.50
Tampering with a sports contest	180.50
Fraud in insolvency	185.00
Fraud involving a security interest	185.05
Fraudulent disposition of mortgaged property	185.10
Fraudulent disposition of property subject to a conditional sale contract	185.15
False advertising	190.20
Criminal impersonation	190.25
Possession of usurious loan records	190.45
Official misconduct	195.00
Obstructing governmental administration	195.05
Giving unlawful gratuities	200.30
Receiving unlawful gratuities	200.35
Escape in the third degree	205.05
Promoting prison contraband in the second degree	205.20
Resisting arrest	205.30
Bail jumping in the second degree	205.35
Hindering prosecution in the third degree	205.55
Perjury in the third degree	210.05
Making an apparently sworn false statement in the second degree	210.35
Making a punishable false written statement	210.45
Tampering with a witness	215.10
Tampering with a juror	215.25
Misconduct by a juror	215.30
Compounding a crime	215.45
Criminal contempt	215.50
Criminal contempt of the Legislature	215.60
Criminally possessing a dangerous drug in the fourth degree	220.05

	Penal Law Section
Criminally possessing a hypodermic instrument	220.45
Promoting gambling in the second degree	225.05
Possession of gambling records in the second degree	225.15
Possession of a gambling device	225.30
Promoting prostitution in the third degree	230.20
Obscenity	235.05
Disseminating indecent material to minors	235.21
Riot in the second degree	240.05
Inciting to riot	240.08
Disruption, or disturbance of religious service	240.21
Aggravated harassment	240.30
Possession of eavesdropping devices	250.10
Divulging an eavesdropping warrant	250.20
Unlawfully solemnizing a marriage	255.00
Unlawfully issuing a dissolution decree	255.05
Unlawfully procuring a marriage license	255.10
Non-support of a child	260.05
Endangering the welfare of a child	260.10
Endangering the welfare of an incompetent person	260.25
Possession of weapons and dangerous instruments	265.05(3)(5)(6)(9)
Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances	265.10(1)(2)(4)(5)(7)
Failure to report a bullet wound	265.25
Prohibited use of weapons	265.35(1)(2)(4)
Violation of firearm licensing provisions	400.00(15)

Class B misdemeanor

	Penal Law Section
Conspiracy in the fourth degree	105.00
Attempt to commit a misdemeanor	110.05(6)
Menacing	120.15
Self-abortion in the second degree	125.50
Issuing abortional articles	125.60
Consensual sodomy	130.38
Sexual abuse in the third degree	130.55
Criminal trespass in the second degree	140.10
Criminal tampering in the second degree	145.15
Reckless endangerment of property	145.25
Fortune telling	165.35
Unlawfully using slugs in the second degree	170.55
Commercial bribery	180.00
Commercial bribe receiving	180.05
Rent gouging	180.55
Issuing a bad check	190.05
Misconduct by corporate official	190.35
Refusing to aid a peace officer	195.10
Obstructing firefighting operations	195.15
Criminal contempt of a Temporary State Commission	215.65
Unlawful grand jury disclosure	215.70
Unlawful disclosure of indictment	215.75
Permitting prostitution	230.40
Unlawful assembly	240.10
Criminal nuisance	240.45
Falsely reporting an incident	240.50
Public lewdness	245.00
Failure to report wiretapping	250.15
Tampering with private communication	250.25
Unlawful obtaining communications information	250.30
Failure to report criminal communications	250.35
Adultery	255.17

	Penal Law Section
Unlawfully dealing with a child	260.20
Unlawfully dealing with fireworks	270.00
Unlawfully possessing noxious material	270.05
Creating a hazard	270.10
Unlawfully refusing to yield a party line	270.15
Violation	
Criminal solicitation in the third degree	100.00
Criminal trespass in the third degree	140.05
Unlawfully posting advertisements	145.30
Disorderly conduct	240.20
Harassment	240.25
Exposure of a female	245.01
Promoting the exposure of a female	245.02
Offensive exhibition	245.05
Patronizing a prostitute	230.05
Prostitution*	230.00
Loitering	240.35
Public intoxication	240.40

* Raised to a class B misdemeanor, L. 1969, ch. 169, eff. Sept. 1, 1969, McKinney's Sess. L. p. 186 (1969).

APPENDIX C

Survey of Collateral Consequences From Conviction of a Misdemeanor in New York*

I. The following collateral consequences accrue as a result of conviction of a "crime", a misdemeanor or of certain specified misdemeanors. "Crime" in New York includes felonies and misdemeanors. N. Y. PENAL LAW, §10.00; *Barsky* v. *Board of Regents*, 305 N.Y. 89 (1953), aff'd, 347 U.S. 442 (1954).

(A) Denial, revocation or suspension of the following licenses resulting from conviction of a "high misdemeanor" or one of the specified misdemeanors which include illegal possession of a dangerous weapon, possession of burglar's tools, buying or receiving stolen property, unlawful entry of a building, unlawful possession of drugs, aiding escape from prison, etc.:

Pier Superintendent, Hiring Agent	N.Y. Unconsol. Laws, §§9814(b), 9818(a)
Stevedores	N.Y. Unconsol. Laws, §§9821(e), 9824(a)
Longshoremen	N.Y. Unconsol. Laws, §§9829(a), 9831(a)
Port Watchmen	N.Y. Unconsol. Laws, §§9841(b), 9844(a)
Checkers	N.Y. Unconsol. Laws, §§9918(3) (b), (5a)

* To a great extent, this survey was compiled by reference to Appendix E of the jurisdictional statement in *Puryear* v. *Hogan*, No. 2199, Misc. Oct. Term, 1968.

Solicit or Collect Union Dues	N.Y. Unconsol. Laws, §§9933
See, in general	N.Y. Unconsol. Laws, §§9912, 9913

(B) Denial of the following licenses:

Civil Service Employment	N.Y. Civ. Service Law, §50(4)(d)	(guilty of crime or infamous or notoriously disgraceful conduct)
Junk Dealer	N.Y. Gen. Bus. Law, §60, §61	(larceny or knowingly receiving stolen property)
Private Investigator, Watch Guard or Patrol Agency	N.Y. Gen. Bus. Law, §74(2)	(conviction of specified crimes including making or possessing burglar's instruments and unlawful entry of building)
Employee of Private Investigator, Watch Guard, Patrol Agency	N.Y. Gen. Bus. Law, §81 (2)(d)	(same specified crimes as above)
Professional Bondsman	N.Y. Ins. Law, §331 N.Y. Code of Crim. Proc., 554-b	(conviction of any crime)

Carry, Possess, Repair and Dispose of Firearms	N.Y. Penal Law, §§400.00 (1)(a)(b)	(good moral character and not convicted of a crime specified in N.Y. Code of Crim. Proc., §552 including jostling)

(C) Suspension or revocation of the following licenses resulting from conviction of a "crime":

Practitioner of Medicine, Osteopath, Physiotherapist	N.Y. Educ. Law, §6514(2)(b)
Dentist	N.Y. Educ. Law, §6613(2)(a)(f)
Pharmacist	N.Y. Educ. Law, §6804(1)(b)
Professional Nurse	N.Y. Educ. Law, §6911(1)(a)
Optometrist	N.Y. Educ. Law, §7108(1)
Certified Public Accountant	N.Y. Educ. Law, §7406(1)(c)
Barber Shop	N.Y. Gen. Bus. Law, §441(a)(9)
Hairdressing, Cosmetology	N.Y. Gen. Bus. Law, §409(a)(9)
Attorneys	*In re Hughes*, 188 App. Div. 520, 177 N.Y.S. 234 (1st Dept. 1919)

(D) *Other Consequences*

Notary Public	N.Y. Exec. Law, §130	(conviction of certain specified misdemeanors)

Juror	N.Y. Judic. Law, §§504 (a)(b), 596(4), 662(4)	(conviction of misdemeanor of moral turpitude)
Public Housing	Standards for Admission of New York City Housing Authority; *Matter of Manigo* v. *New York City Housing Authority*, 51 Misc. 2d 829, 273 N.Y. Supp. 2d 1003 (Sup. Ct. 1966), aff'd, 27 App. Div. 2d 803, 279 N.Y. Supp. 2d 1014 (1st Dept. 1967), motion for leave to appeal denied, 19 N.Y. 2d 583, cert. denied, 389 U.S. 1008 (1967).	
Military Service	Army Reguation 601-270; See, Selective Service Law Reporter Practice Manual §1118, p. 1080.	

II. The following occupational and business licensing provisions require that an applicant be of "good moral character" before a license will issue:

Under New York Statutory Law

Teacher	N.Y. Educ. Law, §3018; 3012(2), 3013(3)
Osteopath	N.Y. Educ. Law, §6506(2)
Dentist	N.Y. Educ. Law, §6608(1)(a)
Dental Hygienist	N.Y. Educ. Law, §6614(2)(a)
Veterinarian	N.Y. Educ. Law, §6704(2)
Professional Nurse	N.Y. Educ. Law, §6906(1)(b)
Podiatrist	N.Y. Educ. Law, §7005(1)(b)
Optometrist	N.Y. Educ. Law, §7105(1)

Ophthalmic Dispensing	N.Y. Educ. Law, §7123(a)(1)
Professional Engineer	N.Y. Educ. Law, §7205(1)(c)
Land Surveyor	N.Y. Educ. Law, §7205(2)(c)
Architect	N.Y. Educ. Law, §7304(1)
Certified Public Accountant	N.Y. Educ. Law, §7403(1)
Certified Shorthand Reporter	N.Y. Educ. Law, §7502
Certified Psychologist	N.Y. Educ. Law, §7603(1)(b)
Certified Social Worker	N.Y. Educ. Law, §7705(1)(b)
Pawnbroker	N.Y. Gen. Bus. Law, §41
Ticket Agent	N.Y. Gen. Bus. Law, §150
Hairdressing and Cosmetology	N.Y. Gen. Bus. Law, §404(1)(b)
Hairdressing and Cosmetology Trainee	N.Y. Gen. Bus. Law, §405(1)
Barber	N.Y. Gen. Bus. Law, §434(1)(b)
Barber Shop	N.Y. Gen. Bus. Law, §438(3)
Attorney	N.Y. Judic. Law, §90 N.Y. Ct. of Appeals, Rule 8

Under New York City Administrative Code

Exhibitions and Performances	B32-1.0
Motion Picture Theatre License	B32-25.0
Non-Professional Motion Picture Exhibitions Code	B32-35.0
Billiard and Pool Tables	B32-45.0
Bowling Alleys	B32-46.0
Shooting Galleries	B32-47.0
Miniature Golf Courses	B32-48.0
Sidewalk Cafes	B32-54.0
Sidewalk Newsstands	B32-58.0
Sightseeing Guides	B32-77.0(e)
Street Musicians	B32-82.0
Public Cartmen	B32-93.0
Expressmen	B32-98.0
Public Porters	B32-106.0

Junk Dealers	B32-114.0	
Dealers in Second Hand Articles	B32-127.0	
Auctioneers	B32-138.0	
Laundries	B32-168.0	
Checking Facilities, Checkers	B32-177.0	
Locksmiths	B32-183.0	
Massage Operator	B32-194.0	
Bathing Establishments	B32-197.0	
Garages and Parking Lots	B32-251.0(b)	
Canvasser for Photographs or Photography	B32-264.0(c)	
Commercial Refuse Removal	B32-267.0(d)	
Conduct Bingo Games	B32-280.0(a)	(good moral character and never convicted of crime)
Public Dance Halls, Cabarets and Catering Establishments	B32-297.0(d)(1)	(fit and proper person)
Coffee Houses	B32-311.0(b)(1)	(fit and proper person)

Those regulations which do not specifically require the applicant to be of good moral character have been held to impose such requirement by implication. *Matter of Boston Trucking Corp.*, 7 N.Y. 2d 299, 165 N.E. 2d 163 (1959); *Matter of Larkin* v. *Schwab*, 242 N.Y. 330, 151 N.E. 637 (1926); *Matter of Picone*, 241 N.Y. 157, 149 N.E. 336 (1925).